# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 212.

HORACE S. JOHNSON, APPELLANT,

vs.

CHARLES W. HARMON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 24, 1874.

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*a* To the honorable Noah H. Swayne, associate justice of the Supreme Court of the United States:

Horace S. Johnson, one of the defendants in the record herewith submitted, comes and shows that there are manifest errors therein in the rulings of the court on the trial of the following issue of fact:

"Whether or not the plaintiff was, at the time of the execution of the deed of trust and notes mentioned in the bill of complaint in this cause, capable of executing a valid deed or contract." (Rec., 140.)

On the trial of said issue the petitioner prayed the court to instruct the jury as follows:

1. As the issue does not present the questions of fraud, imposition, duress, or undue influence, the jury are not at liberty to consider either of them, but must pass solely upon the capacity of Harmon to make a valid deed or contract.

2. To set aside a deed or contract on account of drunkenness, it is not sufficient that the party is under undue excitement from liquor. It must rise to that degree which may be called excessive drunkenness, where the party is utterly deprived of his reason and understanding.

3. The jury must find for the defendants unless they believe that the plaintiff was in such a state of intoxication as not to know what he was doing when he signed the deed in controversy.

4. If the jury believe from the evidence that the defendant knew he was signing a deed of trust upon his property, they must find for the defendant.

Upon which said prayers the jury as follows:

The first prayer was granted unconditionally.

The court held that if the word "utterly" in the 2d prayer intended to express an entire loss of reason in all respects, that it was not good law; but if it meant that the defendant must be incapable of understanding the terms and conditions of the deed of trust, in order to avoid it, then it was good law; and, so modified, it was given to the jury.

The 3d and 4th prayers were granted, subject to the following modification: that it was not sufficient, to make the deed a valid one, for the defendant to know that he was signing a deed of trust on his own
*b* property, but he must have been in such a condition of mind as to be able to know and understand the terms and conditions of said deed. It is not necessary, in order to render the deed of the defendant invalid, that at the time of its execution and acknowledgment he was entirely demented by drink; but his act will be rendered void if he was in such a condition of mind that he could not comprehend what were the terms and conditions of the instrument.

To which modifications of the said instructions the defendants excepted, and their exception was allowed, and they prayed the court to sign and seal this their first bill of exceptions, and the same is hereby done, this 28th day of December, 1872.

D. K. CARTTER, [SEAL.]
*Chief-Justice.*

The petitioner assigns the following errors on said record:

1st. The court erred in refusing said second prayer.

2nd. The court erred in refusing said third prayer.

3rd. The court erred in refusing said *third* prayer.

4th. The court erred in its modification of said prayers, and in its said charge and instructions to the effect that "his (the defendant's) act will be rendered void if he was in such a condition of mind that he could

not (at the time of executing the deed) comprehend what were the terms and conditions of the instrument."

The petitioner says that inasmuch as the amount in controversy is less than one thousand dollars in value, he is not entitled to appeal said case to the Supreme Court of the United States without a special order allowing the same.

*c* He therefore prays for such an order, allowing said appeal under the rules and regulations as provided for by law in such cases.

A. G. RIDDLE,
*Solr. for Deft.*

DISTRICT OF COLUMBIA, *to wit:*

TO CHARLES W. HARMON:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to appeal filed in the clerk's office of the supreme court of the District of Columbia, wherein Horace S. Johnson is appellant, and you are appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief-justice of the said supreme court of the District of Columbia.

D. K. CARTTER,
*Chf-Justice.*

Service acknowledged.

M. THOMPSON,
*Solr. for Harmon.*

(Indorsed:) 2482, eq. doc. 11. Chas. W. Harmon vs. H. S. Johnson et al. Petition of Horace Johnson for an order allowing an appeal to the Sup. Court of the United States. Riddle for Johnson. Filed Oct. 9, 1874. R. J. Meigs.

*d* To the clerk of the supreme court of the District of Columbia.

I, Noah H. Swayne, associate justice of the Supreme Court of the United States, having considered the petition of Horace S. Johnson, defendant in the suit in equity wherein Charles W. Harmon is planitiff against the said Horace S. Johnson, addressed to me, and having inspected the record of the proceedings of the said supreme court of the District of Columbia in said case, and being of opinion that the errors assigned involve questions of law of such extensive interest and operation as to render the final decision of them by the Supreme Court of the United States desirable, and that an appeal to the Supreme Court of the United States ought to be allowed, do hereby order and direct that said appeal be allowed upon the terms and conditions prescribed by law in cases where in said court the amount in controversy is less than one thousand dollars, to wit, upon giving bond, as required by law, in the penalty of two hundred and fifty dollars upon the issuing and service of a citation as prescribed by statute.

In witness whereof I have hereunto affixed my official signature this 7th day of October, 1874.

N. H. SWAYNE,
*Associate Justice o the Supreme Court of the United States.*

e In obedience to the foregoing order of the honorable Noah H. Swayne, associate justice of the Supreme Court of the United States, I hereby transmit to the said Supreme Court a copy of the record and proceedings of the supreme court of the District of Columbia in the case hitherto depending in said last-mentioned court, in said order mentioned, and entitled in said court Charles W. Harmon against Horace L. Johnston and John R. McConnell, in equity, No. 2482, and I do certify that the said copy has been truly taken from originals on file and of record in said supreme court of the District of Columbia.

R. J. MEIGS,
*Clerk of the Supreme Court of the District of Columbia.*

1 *Original bill of complaint.—Filed Aug. 3d*, 1871.

In the supreme court of the District of Columbia, this 29th day of July, 1871.

CHARLES W. HARMON
*vs.*
HORACE S. JOHNSTON AND JOHN R. MCCONNELL. } In equity.

To the supreme court of the District of Columbia, holding an equity court for said district.

The plaintiff complains as follows:

1st. He is a resident of the city of Washington, and sues in his own right.

2d. The defendants are residents of said city.

3d. The plaintiff, on the 3d day of February, 1871, being seized in fee-simple of two houses and premises, to wit, lot numbered
2 twenty-six, in Todd and Gunnell's subdivision of square numbered 465, in said city, executed and delivered to said defendant John R. McConnell a deed of conveyance thereof, to wit, a deed of trust thereon, purporting to convey said lot and improvements to him, his heirs and assigns, in trust, to suffer and permit the plaintiff to occupy and enjoy said lot, &c., until some default made in the payment of two certain promissory notes, each for the sum of three hundred dollars, bearing even date with said deed, "made by Z. H. Whitmore and William Kiernan," and payable, one in five months and the other in six months after date, at the Bank of Washington, with interest at the rate of ten per centum per annum, to the order of said defendant Horace S. Johnson, by the name of H. S. Johnson, and endorsed by the plaintiff, and in
3 case of default being made in the payment of said "debt," or any part thereof, with power in the said defendant McConnell to proceed, on the written request of said Johnson, to sell said premises, or so much thereof as he may deem necessary, at public sale, to the highest bidder, upon such terms and conditions as he, the said defendant McConnell, may deem most for the interest of all parties concerned in said sale, first giving ten notice of the time, place, and terms of said sale by advertisement in some newspaper printed and published in said city, &c.; as will more fully and at large appear by reference to said deed, a copy of which, marked "C. W. H., No. 1," is herewith filed; and made part of this petition.

4th. The said defendant McConnell, the first of said notes having matured,
4 threatens to sell said real estate, under the pretence that said deed of trust empowers him so to do, and to that end

has caused an advertisement to be inserted in the "Star," a newspaper printed and published in said city, of his intention so to do on Thursday, the 3d day of August, 1871; which said advertisement, for greater certainty, and as a part of this bill, the plaintiff reads to the court, as follows, to wit:

"By Green & Williams, auctioneers, No. 319, southeast corner 7th and D streets.

"*Trustee's sale of improved property on the Island, at auction.*

"By virtue of a deed of trust to me, dated February 3d, 1871, and recorded in liber No. 639, folio 31, one of the land records for Washington County, D. C., I will sell at public auction, on Thursday, the 3d
5 day of August, A. D. 1871, at 6 o'clock p. m., in front of the premises, all that certain piece or parcel of ground known as lot numbered 26 in Todd & Gunnell's subdivision of square numbered 465, having a front on a 40-foot alley of 23 feet 8 inches by a depth 48 feet 6 inches, situated between D and E streets south and 6th and 7th streets west, with the improvements thereon situate.

"TERMS: One-third cash; the balance in six, twelve, and eighteen months, with interest; the deferred payments to be secured by a lien on the property. Stamps and conveyancing at the purchaser's cost. A deposit of $100 will be required on the day of sale.

"J. R. McCONNELL, *Trustee.*
"GREEN & WILLIAMS, *Aucts.*"

6 5th. The real estate described in said advertisement is improved by two substantial two-story wood dwelling-houses, in good condition; the one occupied as a residence by the plaintiff and his family, with a front of thirteen feet and eight inches (13 ft. 8 in.) on Six-and-a-half street, between D & E streets southwest, and contains six rooms; and its market value is not less than twelve hundred dollars; the other has a front on said street of ten feet, contains four rooms, in good repair, occupied by a tenant of the plaintiff, at the rent of nine dollars per month, and is worth, with the part of the lot on which it is located, at least eight hundred dollars cash; that each of said buildings are separate and distinct residences, having no communication with each other, and
7 were built for distinct and separate residences, with a yard the depth of the lot (84 ft. 6 in. to a public alley fifteen feet wide) to each house. The highway on which said houses front is graded and gravelled, the gutters and sidewalks well paved, and is laid down on the map of the city by Forsyth, late city surveyor, and is universally known among persons having knowledge of that section of the city, as Six-and-a-half street and not as an alley, as described in said advertisement.

The plaintiff avers, and is ready and willing to maintain and prove as this court shall direct, that said aller building and premises, on reasonable and usual terms of payment, would sell for at least eight hundred dollars, and said larger building and the part of the lot it occupies
8 would sell for at least twelve hundred dollars; and that inasmuch as they are of a class of buildings desirable only to artisans and laborers or men of moderate means, and are sought after only by that class of men whose pecuniary ability limits them to single residences of moderate value, and who are unable to purchase two residences, but would gladly and eagerly avail themselves of the opportunity of purchasing one like either of said buildings on reasonable terms, the

plaintiff submits to the court that the said defendant McConnell, the trustee aforesaid, under the power conferred upon him by said deed of trust to sell said premises, or so much thereof as he may deem necessary to pay said notes, is exercising his power oppressively and without due regard for the interests of the plaintiff, in offering both said houses for sale together instead of separately, inasmuch as said houses will not, in all human probability, sell for two-thirds as much if sold together as they will if sold separately, and so advertised in order to attract the attention and attendance at the sale of the class of men aforesaid.

The plaintiff further complains, and says that said trustee is acting oppressively and without reasonable regard for the interest of the plaintiff in advertising said property as fronting upon an alley, and thereby repelling purchasers, instead of attracting them, whereas the truth is it fronts on a pleasant highway which is popularly known and so laid down on the late maps of the city as a street, to wit, Six-and-a-half street.

6th. The plaintiff further complains, and says that said trustee is not complying with the requirements of said deeds in advertising and giving notice of said sale, in this, that said deed requires said trustee to give ten notice of the time, place, and terms of sale by advertisement, &c., and he only advertises said property on alternate days, commencing July 24th, and ending August 3d, thereby giving at most but six notices of the sale, and not ten as required by said deed of trust.

7th. The said defendant Johnson is the holder of said note and the beneficiary in said deed of trust, and the plaintiff avers and offers to maintain and prove, if he is granted the opportunity, that said defendant induced the plaintiff to execute said deed by covine, artifice, stratagem and deceit; that plaintiff had no interest in said notes and received no consideration for endorsing the same, and said defendant well knew that fact; that said defendant repeatedly requested the plaintiff to endorse them, and give said deed of trust; that plaintiff at first refused so to do, and advised said defendant that plaintiff's wife would not sign the said deed; that said defendant represented to plaintiff that the deed of trust was but a matter of form; that it would not amount to anything; that he did not intend to push the notes, and other words to like effect; and when plaintiff was finally induced and consented to sign said notes and execute said deed of trust, he requested that his wife be not advised of it, to which said defendant replied, "It is no matter about her; she need not sign it or know it; it don't amount to anything," and other words of like import. And plaintiff alleges that he believed said representations at the time made to be true; that said deed was not explained to him; that he did not understand the consequences which might follow its execution; that he is not familiar with such instruments, and but for said representations of said defendant he would neither endorsed said notes nor signed said deed of trust; and plaintiff charges that said representations were made by said defendant for the purpose and with the intent of overreaching and defrauding the plaintiff and to gain an inequitable advantage over him. The plaintiff has repeatedly worked as a mechanic for said defendant, and he knew well that said property was all plaintiff possessed, and that your complainant had acquired it by the constant, steady, and unremitting manual labor and self-denying frugality of himself and wife for a period of more than eighteen years now last past of most arduous toil.

8th. The plaintiff further says, and gives the court to be informed that

he is advised, and verily believes and charges, that the makers of said notes have a good legal as well as equitable defence to at least one-half the amount thereof by reason of said defendant Johnson
14 procuring the same by false and fraudulent representations to them before and at the time of the execution of said notes; the *the* consideration for said notes was the use and occupation of a certain fishing-shore on the Potomac River, about nine miles from this city, the then approaching fishing season extending from about the 1st day of April, 1871, to the 30th day of June, 1871; that while negotiating for the said lease the makers of said notes and said defendant Johnson visited together the locality, and then and there he pointed out the extent of said shore as over two hundred yards more than he had a right to lease, and encroaching upon the grounds of an adjoining proprietor, and at the same time represented that it was one of the best fish-
15 ing-shores on the river, whereas it was one of the poorest and comparatively worthless; and further represented that if said shore did not turn out well he, defendant Johnson, would knock off half the rent; that the makers of said notes believed said representation to be true, and knew nothing to the contrary, and believing them to be true, and relying upon the said promises of said Johnson, they consented to and did lease said shore for the sum of six hundred dollars, and gave said notes, endorsed and secured as aforesaid by plaintiff, as rent thereafter to accrue for the use of said shore. Both the makers of said notes advise the plaintiff that for the reasons aforesaid they intend
16 to contest the payment of said notes, and he is informed by counsel somewhat learned in the law that they have good right to contest the same; and the plaintiff humbly submits that inasmuch as said makers claim a legal defence to said notes and express a determination to resist the payment of the same, that the payee and holder thereof, to wit, said defendant, ought not to be permitted to pursue this summary means of enforcing payment of the full face amount of said notes by a sale of the property of the plaintiff, who has not and never had any interest direct or indirect in the consideration for said notes or deed.

9th. The plaintiff further alleges that on the day and before the
17 execution of said deed and several days prior thereto, he had been drinking intoxicating liquors to excess; that he is not addicted to their use, and he is informed by his friends and he verily believes that he was intoxicated at the time of signing said deed, and he charges that said defendants well knew that fact, and took advantage of his condition to persuade and induce him to jeopard the home of his wife and children.

The defendant files herewith the affidavits of Robert B. Cross, marked "Exhibit C. W. H. No. 2," and affidavit of Joseph O. Wallingsford, marked "Exhibit C. W. H. No. 3," in support of this, his bill, and prays leave to read the affidavits of Z. H. Whitmore and of William Kearnan, made in equity suit in this court No. 2466, doc. 11, between
18 parties to this suit, marked "Exhibit C. W. H. No. 2" in said suit, in support of this bill.

The plaintiff therefore prays:

1st. That subpœnas may issue, &c.

2d. That the said defendant John R. McConnell and Horace S. Johnson, and each of them, their and each of their agents and attorneys, may be restrained by order of this court from selling, or offering for sale, the premises described in said deed of trust.

3d. That said defendant John R. McConnell may be decreed to release said deed of trust by a good and sufficient deed of conveyance of

the said real estate to the plaintiff, or that this court will pass such a decree in the premises as will operate as such release.

3d. That the plaintiff may have such other and further relief
19 in the premises as in equity and good conscience he may be entitled to.

And the plaintiff will ever pray, &c.

The defendants to this bill are John R. McConnell & Horace S. Johnson.

L. G. HINE,
*Of Counsel, & Solr. for Plaintiff.*

I, Charles W. Harmon, on oath say that I have heard read the foregoing bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal are true, and that the facts therein stated on information and belief, I believe them to be true.

C. W. HARMON.

Sworn to and subscribed before me this 1st day of August, 1871.

[SEAL.] CHARLES WALTER,
*Notary Public.*

20 *Exhibit C. W. H. No. 1.*

This indenture, made this third day of February, in the year of our Lord one thousand eight hundred and seventy-one, between Charles W. Harmon, of the city of Washington, in the District of Columbia, party of the first part, and John R. McConnell, trustee, of said District, party of the second part.

Whereas the said party of the first part is justly indebted to H. S. Johnson in the sum of six hundred dollars, for which amount he holds two certain promissory notes, each for the sum of three hundred dollars, bearing even date herewith, made by Z. H. Whitimore and William Kiernan, and payable as follows: The first note payable five mos.
21 after date, and the second note payable six mos. after date, each note drawing ten per cent. interest per annum, and payable at the Bank of Washington to the order of said H. S. Johnson, and endorsed for a valuable consideration by said Charles W. Harmon, party of the first part.

And whereas the said party of the first part is desirous to secure the full and punctual payment of said notes and all interest, costs, and expenses that may accrue thereon, according to the true intent and meaning of the same:

Now, therefore, this indenture witnesseth, that the said part' of the first part, in consideration of the premises, and of the sum of one dollar to him in hand paid by the said party of the second part at and before the ensealing and delivery of these presents, the receipt whereof
22 is hereby acknowledged, *do*th granted, bargained, and sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents does grant, bargain, and sell, alien, enfeoff, convey, and confirm unto the said party of the second part, all that certain piece or parcel of ground situated, lying, and being in the city of Washington, in the District of Columbia, and known and described as lot numbered twenty-six, (26,) in Todd's & Grinnell's subdivision of square number 465, being the same property conveyed by deed from Walter S. Cox to said Chas. W. Harmon by deed which is recorded in liber J. A. S., No. 220, folio 36 and 37 of the land-records of the county of Washington, D. C., to-

gether with all and singular the improvements, privileges, hereditaments, and appurtenances to the same belonging or in any manner appertaining. To have and to hold the same unto and to the use of the said John R. McConnell or his assigns.

In trust, nevertheless, for the uses and purposes following and none other, that is to say, to suffer and permit the said party of the first part, his heirs and assigns, to have, hold, use, occupy, possess, and enjoy the said premises, with the appurtenances, as afore described, and the rents, issues, and profits of the same, to take, receive, and apply to his own use until some default or failure shall have been made in the payment of the said debt, due as aforesaid to the said H. S. Johnson, his executors, administrators, or assigns, or any part thereof, or of any proper interest, costs, and charges thereon, or which may accrue thereon; and upon any and every such default or failure being made in the payment as aforesaid, the said party of the second part shall at the request, in writing, of the said H. S. Johnson, his heirs, executors, &c., proceed to sell and dispose of the said premises as afore described, or so much thereof as he may deem necessary, at public sale, to the highest bidder, upon such terms and conditions as he, the said party of the second part, may deem most for the interest of all parties concerned in said sale, first giving ten notice of the time, place, and terms of said sale, by advertisement in some newspaper printed and published in the city of Washington, and such sale to repeat or postpone, from time to time, as he, the said party of the second part, may deem expedient; and out of the proceeds arising from such sale or sales, (after paying the proper expenses thereof, and other expenses of this trust, including five per centum on the gross amount of said sale or sales, as compensation to said trustee for his trouble and diligence in executing this trust,) to pay in the first place whatever of said debt, interest, costs, and expenses may be due and unpaid at the time of such sale or sales; secondly, to pay whatever of said debt, interest, costs, and expenses may then remain unpaid, although the same may not then have become due and payable; and lastly, the surplus, if any, to pay over to the said party of the first part, his executors, administrators, or assigns; and, in the event of any such sale or sales under the provisions of this trust, to convey to the purchaser or purchasers, on his or their compliance with the terms of sale, all right, title, and estate, legal and equitable, of the said party of the first part in and to the premises sold, free from any liability for the application of the purchase-money.

In testimony whereof the said party of the first part *is* hereunto set his hand and affixed his seal the day and year first hereinbefore written.

C. W. HARMON. [SEAL.]

Signed, sealed, and delivered (having first been duly stamped) in the presence of—

CHARLES MCNAMEE.

COUNTY OF WASHINGTON,

*District of Columbia, to wit:*

I, Charles McNamee, a notary public in and for said county, do hereby certify that Charles W. Harmon, party to a certain deed bearing date on the third day of February, in the year of our Lord one thousand eight hundred and seventy one, and hereto annexed, personally appeared before me, in county aforesaid, the said Charles W.

Harmon, being known to me being the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this third day of February, A. D. 1871.

[NOTARIAL SEAL.] CHARLES McNAMEE,
*Not. Pub.*

*Exhibit C. W. H. No. 2.*

I, Robert B. Cross, on oath say that I am a resident of the city of Washington, D. C., to wit, on 2d street, near corner of F street
23 S. W.; that I am personally acquainted with Charles W. Harmon, and know that during the first week of February, 1871, he was intoxicated nearly the whole time; that early in said month I saw him in the office of John R. McConnell, when said McConnell was drawing a deed of trust for him, Harmon, to execute to secure the payment to Horace S. Johnson of six hundred dollars, and know that Harmon was then so intoxicated that he was very noisy and boisterous, and I heard said McConnell call him to order several times, and threaten to stop writing the deed if he, Harmon, did not keep quiet. Harmon was too drunk to know what he was about.

I know the houses and premises on 6½ st., reputed to be owned
29 by said Harmon. They are distinct houses or residences, in good repair, and in my opinion are worth, the one $800.00, the other $1,200.00, and if sold separately at public sale, would bring greatly more than if sold together. I am a plasterer by occupation.

ROBT. R. CROSS.

Sworn to and subscribed before me this 29th day of July, 1871.

WILLIAM FITCH,
*Notary Public.*

*Exhibit C. W. H. No. 3.*

I, Joseph O. Wallingsford, on oath say that I am a resident of Washington City, in the District of Columbia, residing at No. 17 on Virginia avenue, between 1st and South Capitol streets; that I am a
30 blacksmith by occupation, and personally well knew Charles W. Harmon; that on the day John R. McConnell drew a deed of trust for said Harmon to secure the payment of six hundred dollars to Horace S. Johnson, and at the time said deed was being drawn, early in February last, I saw said Harmon, and know he was very much intoxicated, and heard said McConnell call him to order several times and ask him to keep quiet. Harmon was too much intoxicated to know what he was about. He has the reputation of being an honest, hard-working man, and but seldom gets under the control of liquor.

I know the two houses reported to belong to said Harmon, on 6½ street, S. W., well; they are separate and distinct houses, in good repair. The smaller one is worth, in my opinion, $800.00, and the larger one (in which he resides) is worth $1,200.00. At public sale I think they would sell for several hundred dollars more, separately, than if sold together.

JOSEPH O. WALLINGSFORD.

Sworn to and subscribed before me this 29th day of July, 1871.

WILLIAM FITCH,
*Notary Public.*

31 *Summons to answer, issued August 3d*, 1871.

In the supreme court of the District of Columbia, August 3d, 1871.

CHARLES W. HARMON, COMPLAINANT,
*against*
JOHN R. MCCONNELL ET AL., DEFENDANTS. } No. 2482. Eq. docket.

The President of the United States to John R. McConnell and Horace S. Johnson, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief-justice.

[SEAL.]

R. S. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Asst. Clk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

32 *Restraining order.—Filed Aug. 3d*, 1871.

An original bill praying inter alia an injunction restraining defendants from selling certain property is this day filed. Hearing is fixed for Saturday next, the 5th inst., at 10 o'clock a. m. Until further order, you are hereby restrained as prayed.

By order of the court.

ANDREW WYLIE,
*Justice, &c.*

1871, AUGUST 3D.

*Marshal's return.*

Served both, & served inj't'n on both.

A. SHARP, *Marshal.*

AUG'T 3D, 71.

33 *Injunction order rescinded.—Filed Aug. 5*, 1871.

In the supreme court of the District of Columbia, the 5th day of August, 1871.

HARMON
*vs.*
JOHNSON & MCCONNELL. } Eq. No. 2482.

This cause coming on to be heard on the application of the plaintiff to restrain the sale of the property named in the bill of complaint, in consideration thereof it is ordered that the said motion be overruled, and that the restraining order heretofore granted be rescinded.

By the court:

A. WYLIE.

34 *Affidavit in support of amended bill.—Filed Oct.* 31, '71.

In the supreme court of the District of Columbia.

CHARLES W. HARMON, PLAINTIFF,
*vs.*
HORACE S. JOHNSON AND JOHN R. MCCONNELL, defendants. } No. 2482. Equity.

On this 20th day of October, 1871, personally appear' Michael Brown before me, Nathan K. Ellsworth, a notary public in and for the county and District of Columbia, and makes oath that he was in company with the above-mentioned plaintiff on the day of the execution of the deed of trust, to wit, the third day of February, 1871, and that said Harmon was drunk all that day, and so much so that he did not on that day know what he was about, and could not understand the purport
35 or effect of a deed of trust or promissory note, or any business transaction, and that he, the said Brown, is about twenty years of age, and resides in this city, and has no interest in this suit.

MICHAEL BROWN.

Sworn and subscribed to before me this 20th day of October, 1871.
[SEAL.] NATHAN K. ELLSWORTH,
*Notary Public.*

*Affidavit of William Kiernan.*

On this 20th day of October, 1871, personally appears William Kiernan before me, N. K. Ellsworth, a notary public in and for the District aforesaid, and makes oath that he was in company with the above-mentioned plaintiff the greater part of the day before he executed
36 the deed of trust mentioned in the bill of complaint in this cause, and saw him take several drinks of liquor on that day, and that he was very drunk and stupid, and almost senseless, that day from liquor; and that he was with said Harmon a part of the day on which he executed the said deed of trust and notes, and for some time immediately preceding and at the time of the execution of the said deed of trust and notes, and that he, the said Harmon, was drunk all the day on which he executed the said deed of trust and notes, and that he was so drunk when he executed the said deed of trust and notes that he did not and was not able to know what he was doing or that he
37 was making his property liable for debt or that he was incurring an obligation, and that the said Harmon had been continually drunk for a week prior to that time.

WM. KIERNAN.

Sworn and subscribed to before me, a notary public in and for the aforesaid county, this 20th day of October, 1871.
[SEAL.] NATHAN K. ELLSWORTH,
*Notary Public.*

*Affidavit of Zachariah Whittemore.*

On this 21st day of October, 1871, personally appears Zachariah H. Whittemore, and makes oath before me, E. H. Bates, a justice of the peace in and for the county and District of Columbia, that he was

in company with the above-mentioned Charles W. Harmon on
38 the day of the execution of the deed of trust, and at the time of the execution of the deed of trust and notes referred to in the bill of complaint; and that said Harmon was very drunk all that day, and that in the opinion and judgment of him, the said Whittemore, the said Harmon was too drunk on that day to understand or to do business, and too drunk to know what he was doing when he executed the said deed of trust and notes; and too drunk when he executed said deed and notes to know that he was thereby making his property liable to be sold to pay said notes, or to know that he was incurring legal obligations; and that at the time of the execution of said deed he expressed
39 himself to the effect that said Harmon was not fit to do business; and that he, the said Whittemore, has no interest in this suit.

Z. H. WHITEMORE.

Sworn to and subscribed before me.

E. H. BATES, *J. P.*, [SEAL.]
*Justice of the Peace.*

*Amended bill.—Filed Oct.* 31, 1871.

In the supreme court of the District of Columbia, holding an equity court for said District.

CHARLES W. HARMON, PLAINTIFF,
*vs.*
HORACE S. JOHNSON AND JOHN R. MCCONNELL, defendants.
No. 2482. Equity docket 11.

The amended and supplemental bill of complaint of the said plaintiff humbly shows, that heretofore he filed his bill of complaint in
40 this court against the said defendants praying, amongst other things, for an injunction to restrain said defendants from selling the property mentioned in said bill, and that said McConnell should be decreed to release the deed of trust mentioned in said bill, and for general relief. And other proceedings were had, as by the same proceedings now in this court will appear. And the plaintiff has lately discovered, and now charges by way of amendment and supplement to his aforesaid bill of complaint, that when he executed the said deed of trust and notes he was so drunk that he did not know what he was doing, and did not know that he was making his said property liable for the payment of said notes, or that he was incurring any obligation to pay
41 them, and files herewith and as part of this bill of amendment, &c., the affidavits of William Kiernan, Michael Brown, Zachariah H. Whittemore, Robert B. Cross, & Jas. O. Wallingsford. And that afterwards, to wit, on the 21st day of September, 1871, the said McConnell sold the said property, at public auction, to said Johnson at and for the price or sum of $600 or $650, and he claims the said property as his own and has given the plaintiff notice to leave the said property, a copy of which notice is herewith filed and marked "Notice," and made part hereof; and the plaintiff is informed and believes that said Johnson has notified the tenant of a part of the property to leave the same, and also demanded from the said tenant the key of the same;
42 and the said Johnson is determined, as the plaintiff is informed and believes, to take possession of said property.

PRAYER.

And the plaintiff prays as follows:

1. That the sale to said Johnson may be annulled and set aside.

2. That said McConnell may be enjoined and restrained from making any conveyance of said property to said Johnson or any other person.

3. That if said McConnell has made any conveyance of said property to said Johnson, such conveyance may be annulled and set aside.

4. That said deed of trust and notes be decreed null and void.

5. That said Johnson be enjoined and restrained from taking
43 possession or in any way interfering with said property or with the plaintiff, or any tenant thereof, in the free use and enjoyment of said property.

6. That the plaintiff may have such further or other relief in the premises as the nature of the case may require.

The defendants to this amended and supplemental bill of complaint are Horace S. Johnson and John R. McConnell.

C. W. HARMON.

COUNTY OF WASHINGTON,
*District of Columbia, ss:*

On the 20th day of October, 1871, personally appears the above-named plaintiff, Charles W. Harmon, before me, a notary public in and for the county and district aforesaid, and makes oath that he has read
44 the foregoing amended and supplemental bill by him subscribed, and knows the contents thereof, and that the facts therein stated upon his personal knowledge are true, and that the facts therein stated upon information and belief he believes to be true.

[SEAL.] NATHAN K. ELLSWORTH,
*Notary Public.*

*Notice to vacate premises.*

WASHINGTON, *October 18th*, 1871.

CHARLES W. HARMON:

You are hereby notified to leave the premises now occupied by you, situated on 6½ street, between D & E st., square 465, purchased by me at the trustee's sale on the 22d day of September, 1871, of John R. McConnell, trustee, on or before the 18th day of November next.

H. S. JOHNSON.

45 *Answer of deft. Horace Johnson.—Filed Nov. 25, 1871.*

In the supreme court of the District of Columbia, the 25th day of November, 1871.

HARMON *vs.* JOHNSON ET AL. } No. 2482. Eq. docket 11.

The separate answer of Horace S. Johnson to the bill of complaint in this cause.

This defendant says:

1. That he admits the residences of the parties as stated in said bill, and the seisin of the plaintiff in the property and the execution of the

deed of trust mentioned therein, but denies that the said houses are worth $1,200 and $800 respectively.

2. He admits that L. H. Whittemore and Wm. Kiernan rented his fishing-shore on the Potomac and made the two notes spoken of
46 in said bill for $300 each in payment of the rent of said shore, and that the plaintiff, Harmon, executed the said deed of trust to secure the payment of the said notes.

3. He further admits that upon a default occurring in the payment of said notes, on his written order, this codefendant, McConnell, after several delays, caused by the application of the plaintiff to this court for injunctions, proceeded to sell the said property under the advertisement hereto annexed, and made part of this answer as Exhibit H. S. J., No. 1.

4. This defendant further states that at the said sale the said property was bought in for him to secure his said indebtedness for the sum of $ ; that he offered the plaintiff every opportunity to redeem
47 his property upon the payment of said indebtedness and the costs and expenses incurred in the said sale and the suits instituted by him, the said plaintiff; and that after several delays to allow him time so to do, the said McConnell, as trustee, executed the proper deed to convey the said property to this defendant.

5. This defendant avers that the sale was a perfectly fair one, and that the just and liberal terms prescribed by the advertisement were strictly adhered to, and that the property sold for as much as it could be fairly expected to bring at public auction.

6. This defendant denies explicitly all charges in said bill of fraud, covin, and stratagems, in all or any of the transactions
48 connected with the leasing of said fishing-shore, the execution of said notes, or of the deed of trust securing the payment or the sale of said property, and avers that he has acted throughout in the matters contained in said bill in good faith.

7. He denies that he ever made any false or fraudulent representation to said Kiernan & Whittemore in regard to the extent or value of said fishing-shore, or ever offered to share their risks in fishing said shore by reducing their rent if they should prove unsuccessful, or they have any good defence to half the amount of their said notes or any part thereof.

8. He avers that he always refused to rent the said fishing-shore to the said Kiernan & Whittemore unless they secured the pay-
49 ment of the rent, and that they brought the plaintiff to him and offered him as endorser thereof, but this defendant refused to accept the said notes unless the said plaintiff would give the deed of trust upon the property mentioned in said bill.

9. That after some hesitation the plaintiff agreed to give said deed of trust, and, at his suggestion or that of one of the makers of the notes, his codefendant McConnell, who was then unknown to this defendant, was selected to draw the papers and act as trustee in the deed.

10. He denies that he ever represented to the plaintiff, either at, before, or after the time of the execution of said deed of trust, that said deed was a mere form, that it did not amount to anything, &c., but on the contrary he avers that he always informed the plaintiff that
50 he should look to him for the payment of said notes if they were not paid at maturity, and would hold his property responsible for the same under the deed of trust.

11. This defendant admits that *that* the plaintiff did say he did not want his wife to know anything about this deed, and that he said he would

take it without her signature, because he regarded the deed as ample security for the notes without her release of dower.

12. He avers that he saw no signs of intoxication in the plaintiff at the time of the execution and delivery of this deed, about 10½ o'clock a. m., and believes that the averments of the bill and of the affi-
51 davits annexed thereto that the said plaintiff was so intoxicated that he was not fit to do business and did not know what he was doing are scandalously and willfully false.

He further avers that after the first of said notes fell due the plaintiff several times asked for an extension of time, which was granted him, and that at no time till the commencement of eq. cause No. 2866 did he speak of having been intoxicated when he executed said note, and this defendant believes and so charges that this defense is an after thought cunningly contrived to defraud him of his just dues.

13. Finally this defendant denies all the allegations of said bill and of the affidavits accompanying it, not expressly admitted in this answer, and submits himself to the judgment of the court, hereby
52 expressing his willingness to convey the property in controversy to the plaintiff upon his paying to him the amount of said notes with the interest due thereon, the expenses of sale, the cost of advertising, and the costs and expenses incurred by the said defendant in consequence of the various legal proceedings instituted by the said plaintiff, and if he fails to do so within reasonable time this defendant prays that the plaintiff may be ordered to deliver up the premises in controversy to him.

And this defendant praying that the affidavits of Horace S. Johnson & J. R. McConnell filed in equity cause No. 2466 may be read in support of this answer, asks that he may be hence dismissed with his reasonable costs.

H. S. JOHNSON.

FRANCIS MILLER,
*Solicitor for H. S. Johnson.*

53 I, Horace S. Johnson, on oath say that I have heard the foregoing answer by me subscribed, and know the contents thereof, and that the facts therein stated of my own knowledge are true, and as to those stated on information and belief I believe them to be true.

H. S. JOHNSON.

Subscribed & sworn to before me this 25th of Novm., 1871.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
*Asst. Clerk.*

*Replication.—Filed Nov.* 7, 1871.

In the supreme court of the District of Columbia, the 7th day of December, 1871.

CHAS. W. HARMON, PLAINTIFF,
*vs.*
HORACE S. JOHNSON ET AL., DEFTS. } No. 2482. Eq. doc. 11.

The plaintiff hereby joins issue with the defendant Johnson.

M. THOMPSON,
*Solr. for Plaintiffs.*

54 *Testimony.—January* 5, 1872.

In the supreme court of the District of Columbia.

CHAS. W. HARMON
*v.*
HORACE S. JOHNSON AND MCCONNELL. } Equity. No. 2482.

ROBERT R. CROSS, of lawful age, a witness produced and sworn on behalf of the plaintiff, and a resident of Washington, D. C., deposeth and saith:

I reside on 2d street near F, S. W. I have resided in this city 37 years. My occupation is that of a plasterer. I am not particularly acquainted with Mr. Johnson, but I know him when I see him. I have known Mr. Johnson from 1856 to the present time. I have known Mr. Harmon from 1857 until the present time. I saw Mr. Harmon on Feb-
55 ruary 3, 1871. The first place I saw him was 4½ street, near Virginia avenue. I think it was in the morning. After passing the time of day, I discovered that Mr. Harmon had been drinking, that he was in liquor. He became very communicative and told me his business; that he was going security for William Kernan and Zachariah Whitmore. I did not like the idea of it because I did not think it a safe investment, and tried to persuade him out of it. He said he would do it, and said he had plenty of money. He then commenced talking about his relations, and one thing or another, flying from one thing to another as a crazy man would do; talking about his rich relations and his preacher brother; mixing things up; did not make sense. We got something to drink during that time of our conversation on
56 two or three occasions. I went with him. I did not keep my head clear on all occasions.

Question. Did you keep your head clear on that day?

Answer. As near as I recollect I did. Mr. Harmon was drunk and I was sober. I drank something at that time. I drank a good deal. I mean to say that I was a drinking man them days. I did not mean to say my head was not clear that day.

Ques. Just state when and where you saw Mr. Harmon at any other time or place on that day.

Ans. I had not parted with Mr. Harmon when I was joined by Mr. Whitmore and Mr. Kiernan, and I think Mr. Wallingsford was in company. I won't be sure. The first place I think we stopped at was Squire Walter's office; he being not in Mr. Whitmore said, "Let's
57 go to Captain McConnell's." We all then went to Captain McConnell's office. I did not go inside Capt. McConnell's office. I went in the front door or passage. There I heard Mr. Harmon talking in a very boisterous conversation. I heard Captain McConnell tell him that he would have to stop and keep order. Captain McConnell called him to order on two occasions. Then was when I suppose they did the business. It was February 3, 1871. I made a memorandum of the date. The reason I came to remember the day of the month was that when I came from the court-house, I thought it was a loose piece of business, and we stopped on the corner of 6th street and Maryland avenue, South Washington, at a restaurant, and I picked up that day's paper and took that date from it and wrote it down with a lead-
58 pencil in my note-book. It was the third of February, 1871. That is all I know about it. There may be some things that I don't recollect, and there may be some words that are not exactly as

they should be about Capt. McConnell calling him to order, but the meaning of Capt. McConnell's words were that Charlie would have to stop his noise or he would have to stop writing; should have to stop his business, on two occasions. That is all I know about it. I have stated that Mr. Harmon was drunk and disorderly. He did not behave himself as a sober man. He behaved in a boisterous and disorderly manner. I don't know what time I met him in the morning, but as near as I can judge at this distant day it was about nine or ten o'clock in the morning. I left him about 3 or 4 in the afternoon, I think.

59 Quest. Was he, during the time you were with him on that day, able to transact business understandingly? Was he sufficiently sober to know how to transact business?

Ans. I decidedly think not. I have not a hair-breadth of interest in the matter in controversy between Mr. Harmon and Horace S. Johnson in this suit.

Cross-examined:

I could not well recollect when I got Captain McConnell's office. Charlie and I were sometime on the street together. I think it was a little before noon. Harmon was in McConnell's office a good while; three-quarters of an hour, I should judge; could not well say at this distant day. I believe the business was finished when Harmon left. I was told so by Mr. Harmon that he had gone security. During

60 the time Harmon was in McConnell's office, I was right at Mr. McConnell's door walking up and down there trying to pass the time until they came out. Me and Mr. Kiernan here and Mr. Whitmore and Mr. Wallingsford and Mr. Harmon all came down 4½ street together. Mr. Harmon came out of the office (before we went down 4½ street) with another gentleman, and said he would be back in a short time. He did come back. I could not say who that gentleman was. It might have been Capt. McConnell or Mr. Whitmore; can't say whether it was Mr. Johnson. I thought it was too late for me to take any interest. Don't recollect that I saw Mr. Johnson. You must recollect I did not go inside Capt. McConnell's office. I was with Harmon after I left McConnell's office about three or four hours as near as I can rec-

61 ollect. Harmon told me he had gone security for Mr. Whitmore and Horace Johnson for fishing-shore and tackle, $600, I think. I do not know whether the deed of trust was acknowledged on that day. I know that it was February 3, 187[illegible]. Perhaps that is what Harmon went out for. I don't know. I only know what Harmon told me that he went security. He told me so that evening. I don't know as there was any one came out of the office except the party I have named. I don't think there was. We all went one way. I don't think we took a drink anywhere near McConnell's office. The first place we drank was at Kelly's, between Maryland avenue an' C street on 4½ street after we came the office.

Ques. Mr. Cross, do you mean to state, on your oath, that Mr. Harmon did not know what he was doing when he signed that deed of trust?

62 Ans. I mean to state, on my oath, that I candidly believe he was not capable of transacting business.

Ques. Do you say that he did not know what he was doing when he signed that deed of trust?

Ans. I do not think if he had been sober that he would have signed any such paper.

Ques. Was Mr. Harmon so drunk at the time he signed that deed of trust that he did not know that he was signing a deed of trust?

Ans. Well, that is a hard question. Mr. Harmon might know he was signing a deed of trust, but might not know the magnitude of it—might not know that a single slip of the pen might leave his children homeless.

Ques. Did Mr. Harmon know that he was signing a deed of trust?

Ans. That I cannot say, and you can't, nor nobody can't.

63 Ques. Did not Mr. Harmon tell you that very day that he had gone security?

Ans. He did. He told me several other things, but it was like reading poetry, you had to take the sense from the nonsense.

Ques. Did you see Capt. McConnell that day?

Ans. That I cannot say. I don't remember any other at the office but those I have named. I think it was Capt. McConnell's voice I heard.

Ques. Where is Capt. McConnell's office?

Ans. That is one thing my mind is cloudy about. I think it is on Louisiana avenue, near Mr. Bradley's corner. I could not say exactly where it is or show you the door. It was in the first story—I think on the ground floor. I can't say whether there was a porch above the door. I should regard the ground floor as the basement if there

64 was a porch above it. I do not recollect whether it was next to Mr. Bradley's corner or not. In fact, sitting here, I cannot recollect whether there was any house between Mr. Bradley's and police headquarters. I cannot say whether the office was in Mr. Bradley's building or between it and police headquarters. I think it was in Mr. Bradley's building. I mean by police headquarters Mr. Wallack's old residence. I staid in the passage-way while this business was being transacted.

ROBT. CROSS.

(It is agreed by counsel that the affidavits of Whittemore and Kiernan, filed with the amended bill, may be taken as their evidence in chief.)

Mr. Kiernan, cross-examined by Mr. Miller for defendants, having been duly sworn:

65 Question. Is Mr. Harmon a friend of yours?

Answer. Yes, sir; I believe he is.

Ques. Mr. Kiernan, do you mean to say that you persuaded or permitted your friend Charles Harmon to sign a deed of trust to secure the payment of your own debt when he was so drunk that he did not know what he was doing?

Ans. I don't pretend to say that I persuaded him on that day. I did not ask him on that day. Previous to that time I asked him to go security for Mr. Whittemore and I. I let him do it with good intentions, sir, which, if I had fished the shore and had not made money enough to pay the amount he went security for, my intention was to pay it out of my own pocket at the most convenient time.

Ques. Did you stand by and see your friend Harmon risk his

66 home and his family's home for you when he was so drunk that he did not know what he was doing?

Ans. I did not consider it at the time any risk for him to run.

Ques. But you was present and saw him do it?

Ans. I was present when he signed it.

Re-examined:

If I had thought there was any risk, I would not have stood by and

let him sign it. I expected to fish the shore myself at that time. I expected to pay the debt myself.

Recross-examined:

Ques. Do you say that Mr. Harmon was so drunk that he did not know he was signing a deed of trust?

Ans. I did not say so. That is more than I could say.

Ques. Do you say so now?

67 Ans. I could not possibly say he was. A man may be stupid, and still have some little idea of what he is doing.

WM. KIERNAN.

MICHAEL BROWN, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the plaintiff, deposeth and saith:

I am acquainted with Mr. McConnell, but not with Mr. Johnson. I have known Mr. Harmon about two or three years. I can't recollect whether I saw Mr. Harmon on February 3, 1871. I know I saw him round the store during that time. Can't recollect whether I saw him that day. At that time he was part of the time sober and part of

68 the time pretty tight. I don't know whether I saw him on the day the deed of trust was executed to secure Kiernan and Whittemore notes to Johnson. I heard a light sketch around the store that he was going security. I was keeping store at Zachariah Whittemore's grocery store. I believe he is one of the parties that made the note. I can't recollect the day, but I recollect it was a dark, cloudy day that Mr. Whittemore sent me for the wagon to Mr. Reisinger's. It was in February, or the latter part of January. At that time he was tight. I mean drinking. He was pretty drunk, but I can't he was real drunk. He was all the time round the store there at that time. He was pretty tight at that time round the store there.

MICHAEL BROWN.

Examination adjourned until Monday, the 7th of January, 1872, at 5 p. m.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

69 JAN. 9, 1872.

JOSEPH O. WALLINGSFORD, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the plaintiff:

I am well acquainted with Mr. Harmon—better than I am with Mr. Johnson. Have known Mr. Johnson some time. Am not interested a particle in this suit. I was in the office of J. R. McConnell on or about the 3d Feb'y, '71, with Mr. Harmon. Mr. Johnson was there at the time I was there, a gentleman by the name of Cross, Mr. McConnell, Mr. Whittemore, and also Mr. Kiernan, to the best of my knowledge and belief. There was an attempt to draw up a paper called a deed of trust, but whether it was finished on that day I could not say. Mr. Harmon was under the influence of liquor. I should not judge he was sober. I should consider him in a fit condition for business of any kind.

70 Ques. In your opinion was he sufficiently sober to understand and enter into a business transaction, such as the giving of a deed of trust upon his house and home?

(Counsel for defendant objects to form of question.)

Ans. I do not think so.

(Answer objected to.)

I should judge I was with Mr. Harmon at least two-thirds of the day.

Ques. During that time was he sufficiently sober to understand and enter upon a business transaction such as the giving of a deed of trust upon his real property.

(Question and answer objected to.)

Ans. I do not think so. I saw him the next day, to the best of my knowledge and belief. I do not think he was sober on that day; I could say he was drunk. I can say with safety he was not sober. I
78 know his two houses, in one of which he lives. I should judge, from what little I know about property, they are worth about $1,500 or $1,600. In fact, I am not a judge of property nohow, only by the way property sells.

Cross-examined:

I have stated all that I recollect who were in the office of Mr. McConnell. There were Mr. Cross, Mr. Kiernan, Mr. Whittemore, Mr. McConnell, and Mr. Harmon. Those are all that I can think of at present. I am not sure there were no more, am not sure there were. This office was on 4½ street, near C. It was down a few steps. You go down off the pavement. I am not sure whether the deed of trust was finished that day or not. I don't recollect where I met Mr. Harmon; but,
79 to the best of my knowledge, it was on 4½ street. I met him in the morning, somewhere between the hours of 7 and 9. Mr. Whittemore was one of the parties that was with him at that time; might have been several more; I don't recollect. I was with him until, I suppose, three or four o'clock, and after that—not at all the time from the time *from the time* I met him—was with him at several restaurants and at the office. When we first met we took a drink together, I believe, or mighty soon after we first met. To the best of my knowledge and belief, we came to Mr. Johnson's store on the avenue. I don't recollect whether Cross was with us at that time or not; would not say for certain. Mr. Whittemore was along. I think Mr. Kiernan was along. I think a boy—a wagon-boy—was along, that drove a wagon.
80 I saw Mr. Johnson. I was in his store with these other parties. We went from there to the corner of Maryland avenue and 6th street, to the best of my recollection, on the island, south. We went into a restaurant there. When we came back we came up on the avenue—back to Mr. Johnson's; went from Mr. Johnson's round to Mr. McConnell's office; could not recollect the time; could not think at all. It has been some time ago; should think we were in Mr. McConnell's office one hour, if not more. He commenced to draw up the paper while we were there. I don't think it was finished while we were there. We came round again on the avenue. I did not go back to Mr. McConnell's office, to my knowledge, on that day. I don't recollect seeing
81 Harmon sign the deed of trust. I do not know where Cross joined me that day. I have no knowledge when the deed of trust was signed. Harmon talked that day about the deed of trust and other things too, considerably. He told me what he was going to McConnell's office for that day. He told me that he had to go there with Mr. Whittemore and Mr. Kiernan; that Mr. Johnson was going to be along. That was before I came off the island with him. He said he was going to do something about a fishing-shore—going their security or something of that sort. Mr. Harmon talks a good deal when he is drinking. I did not pay much attention to him. I did not know he was going to give this deed of trust to secure the notes until I got to the office. He

talked a good deal about several things after we left the office.
82 Whether he talked about the deed of trust or no, could not say.
Mr. Harmon McConnell's office while I was there. He went with Mr. Whittemore. To my knowledge, no one else went along. From what they said when they came back, I know where they went. They went to the city-hall. I did not hear them say what they went for. I saw a paper in Mr. Harmon's hand when they came back. I heard it was the deed of his property—the deed that was given to him when he bought the property.

(Counsel for pltf. objects to evidence as hearsay.)

I did not say Mr. Harmon was so drunk. I said that he was under the influence of liquor; that he was not capable of attending to business of any kind, in my judgment. He was under the influence of
83 liquor so that, in my judgment, I did not think he knew what he was doing. I think he could have signed a paper and not know it. He was talking a good deal in the office. To the best of my knowledge, he spoke of this deed of his property. I could not say whether he knew what it was. He was off of one subject and on to another subject; he did not confine himself to any particular subject. I cannot answer whether I thought he knew it was a deed or not. I recollect something was said that the deed of trust couldn't be finished that day. I think Mr. McConnell said something like this: that Harmon had better go up to the city-hall and get his deed. Harmon started off. He came back with a paper in his hand. I don't think Kiernan and Whittemore were drunk that day. If they were, I did not know it.
84 If Cross was drunk, I did not know it. Cross had been drinking. I had been drinking. I was about as I am now. I believe I was all right at the end of the day.

JO. WALLINGSFORD.

THOMAS KELLEY, of lawful age, a witness produced and sworn on behalf of the plaintiff, a resident of Washington, D. C., deposeth and saith:

I have no interest in the matter in controversy in this suit. I have known Mr. Harmon, the plaintiff, since 1857. I saw him about the 3d of February, 1871. I saw him between the 1st and 5th of Feb'y nearly every day—I am satisfied every day—within that time. I think he was drunk, or had been drinking, most of the time when I
85 saw him. I don't think he is competent to transact business when he is drinking. I don't think he could attend to business at that time when I saw him. During that time I saw him three or four times a day. He came to the house very often. Has been coming for several years.

Ques. State how often you have seen Mr. Harmon drunk within the last two or three years.

Ans. I cannot answer that very well.

JAN. 11, 1872.

AMOS A. LAZENBY, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the plaintiff, deposeth and saith:

I know Charles W. Harmon and Horace S. Johnson, parties to this suit. I have known Mr. Harmon two or three years. I know
86 Mr. Johnson by sight. Never spoke to him in my life. I have seen Mr. Harmon in the course of my life under the influence of liquor for the last twelve months, and about the first of February very

much so. I saw him from the first to the fifth of February, 1871, every day, and part of the time twice a day. He was under the influence of liquor every time I saw him, and most of the time very much under the influence.

Ques. State whether or not, in your opinion and judgment, Mr. Harmon was capable of transacting business and entering into contracts understandingly and intelligently.

Ans. I do not think he was.

Ques. Give the reason why you think so.

Ans. Drinking appears to affect his mind a great deal more than it does a great many others.

87 Ques. Was he sufficiently sober to understand and to know the difference between going security upon a promissory note and giving a deed of trust upon his houses and lots?

(Objected to by deft.'s counsel.)

Ans. I do not believe he was. I have no interest on earth in the matter. I know where Mr. Harmon's property mentioned is. I think it is worth about $2,000.

Cross-examined:

During these five days I should think Mr. Harmon was entirely incapable of doing business from the influence liquor. I am a carpenter. If Mr. Harmon had got me to do a day's during those five days I should certainly have expected him to pay me for it. I do not know anything about the execution of this deed of trust. At

88 the commencement of the month of February, 1871, I had just finished a job of work for him. I had begun it in January. That enables me to fix the five days in *in* my mind. I was working on Mr. Johnson's house; I am sure it was the latter part of January, as far as my memory serves me. I did the work on two houses on C street near 6th; put down some washboarding; put some beads in the windows, and other items I cannot recollect. I did not make out a bill; hardly ever make out a bill for a boss-carpenter. I was working for Mr. Harmon, who is a boss-carpenter, on Mr. Johnson's houses. I am one of Mr. Harmon's hands, when it is convenient for me to work for him; when I am idle, and he has got work to do.

A. A. LAZENBY.

89 BENJAMIN STOWNELL, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the plaintiff, deposeth and saith:

I know Mr. Harmon and Mr. Johnson. I have known Mr. Harmon about five years and have known Mr. Johnson about 25 or 28 years, may be 30. I saw Mr. Harmon first of February last, and through February. I lived just opposite where he used to visit on or about the 3d of February. I saw him nearly every day. I saw him pretty much every day, all through the month. I saw him in the morning about seven and about twelve o'clock, and at night across the street. I must profess that he was drunk nearly all the time. I have seen him under

90 the influence of liquor for weeks and weeks on a stretch; could hardly catch him sober. He was a man that I would not like to have done business with; should not like to make a contract with him at that time, he was so much under the influence of liquor. I mean from the first of February to the third.

Ques. State whether or not, in your opinion and judgment, Mr. Harmon was sufficiently sober to know the difference between going security

upon a promissory note and going a deed of trust to secure the payment of that promissory note. I mean on or about the 3d of February, 1871.

Ans. Of course that is a hard question for me to decide. I do not think he was of good sound judgment. Come down to the common sense of it, I do not think he was fit to attend to the business; he might have understood it.

91 Ques. Does liquor effect the minds of some men more than others when taken in the same quantities?

Ans. I do not know. I have no interest in this matter.

Cross-examined:

Mr. Harmon at this time was working around. I don't know what he was doing. He had a shop on South B street, between 4½ street and 3d. He was working at his trade. I do not know anything about the execution of the deed of trust spoken of. I would not be sure I saw him on Februard 3, 1871, but I saw him all through the month, Sundays and week days, saw him across the street, sometimes at Mr. Barnes', sometimes at the shop, sometimes at Kelley's restaurant. Did not talk with him. Sometimes would speak with him, "Good morning, Mr. Harmon,"

92 or something like that; sometimes would speak a few words with him. I know Mr. Kiernan and Mr. Whittemore. Know Whittemore by sight; I have spoken to him. I am a tin and sheet-iron worker.

BENJN. STOWNELL.

Examination adjourned until Tuesday the 16th January, 1872, at 2 p. m.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

JAN. 16, 1872.

ZEBULON W. BECK, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the plaintiff, deposeth and saith:

I know Charles W. Harmon, the plaintiff in this case. Have known him nearly all my life. Saw him on or about the 3d Febru-

93 ary, 1871. Saw him at city-hall. Saw him go in and come out again. Mr. Whittemore was with him. I considered him drunk, not capable of doing business.

Ques. Do you think he was capable of knowing the difference between going security on a promissory note and giving a deed of trust on his real property?

(Objected to.)

Ans. I don't believe he was. If he had been, he would not have done it. I saw him going into the magistrate's office and coming out of it. Mr. Whittemore and Mr. Horace Johnson were with him. Harmon was noisy on the street, talking as he went along. I have known him so long that I know when he is drinking as well as I know when I am drinking myself.

Ques. State whether or not liquor affects the senses of some men more than it does others.

(Objected to.)

94 Ans. I believe it does, sir.

Ques. How does it affect Harmon's as compared with those of others under the same degree of influence of liquor?

(Objected to by deft.'s counsel.)

Ans. When he is drinking I believe he would do almost anything for a man; can be persuaded to do almost anything to benefit a man. I have always found him so, at any rate. I have no interest upon earth in this matter. I did not see him after that day on or about that time.

Cross-examined:

To the best of my recollection, I saw Mr. Harmon about February 3, 1871. I saw him that day making this transaction.

Ques. Are you sure it was the 3d day of February, 1871, that you saw him?

Ans. I believe it was, sir; to the best of my knowledge, it was.

95 Ques. What fixes that date on your memory?

Ans. I know the month had just come in. To the best of my recollection, it was the third.

Ques. What fixes it in your memory that the month had just come in?

Ans. I always know when a month comes in and goes out. I was not working for Mr. Harmon at that time. I have worked for him. Am not working for him now. I last worked for him a year ago last summer. I have worked for him some years before that. When I first saw Mr. Harmon, I was coming out of the city-hall lot and I saw them cross to go in; I was coming out of the east side. They were coming across the street; near the pavement when I saw them; near the east end of the city-hall. I saw them go into the lower door of the east end

96 passage-way, I suppose it was. Mr. Whittemore alone was with Mr. Harmon. That was all that I saw go in. I did not speak with them. They did not stay a great while in the city-hall. I stood on the pavement until they came out. I just stood there. I was not doing any work, and I was just knocking around. I did not speak to them when they came out. When they went away I went along down the street behind them. I had no particular reason for following them. They went into a magistrate's office, I suppose, I took it to be, down 4½ street. I don't recollect what magistrate's office it was. I did not take notice of the name. I have never noticed since. It was after twelve o'clock, in the afternoon. I could not say how

97 much after twelve. I had been to dinner. I ate my dinner at my house, on G street between 1st and 2d. I was not at work that day. I generally calculate to eat between 12 and 1, as near as I can. I left home pretty soon after dinner that day. I did not know what business Mr. Harmon and Mr. Whittemore went into the city-hall for. I have heard of it since, of course.

(Objected to by pltff.'s counsel.)

No person recalled my seeing Mr. Harmon and Mr. Whittemore to my recollection. I saw them there, and of course I have always recollected it. It did not go out of my mind. I have stated about all that I know about it. I mentioned to my wife when I went home my seeing Mr. Harmon and Mr. Whittemore. I talked to Mr. Harmon afterwards about seeing him.

Ques. When did you first mention to Mr. Harmon the fact of your having seen him near the city-hall on the 3d February, 1871?

98 Ans. I don't recollect. It was a day or two, or probably three days after; I am not certain.

Ques. What led you to speak to him about it?

Ans. I often talk to him about things.

Ques. When were you told that you would be wanted as a witness here?

Ans. I was told this morning. I disremember whether it was last Friday or Saturday that it was first spoken of. Mr. Harmon I was talking with about it, or rather I told him I knew the state he was in at the time. It was the first time that I told him to his *first* so; I had spoken of it to others. I don't like to tell a man he is drunk to his face.

Ques. You had never talked with him, then, before about his condition and having seen him at the city-hall?

Ans. I had talked with him about his being at the city-hall, but not about his condition.

99 (The witness having answered, "No, sir," and being asked by plff.'s counsel "Is that your answer?" defts.' counsel desires this entry to be made.)

I did not see Mr. Harmon any more after he and Mr. Johnson and Whittemore turned up to the avenue after coming out of the magistrate's office. I was standing out on the pavement when they came out of the magistrate's office. When they went into the magistrate's office I stopped there awhile. I had nothing else to do. I merely stopped until they came out. As the three went along together down I said nothing to them. I did not speak to Mr. Harmon that day, to my recollection. I did not see them stop before they got to the avenue. I have

100 no recollection of seeing them stop. It might have been two or three days after that that I saw Mr. Harmon. I often see him. He had been drinking for some time. Every time I saw him he had been drinking. He was drinking whiskey enough to make a man drunk. I know it would have made me drunk; I would not call him sober.

Ques. Do you know whether he was drunk the first four or five days of February, except the 3d of February, 1871?

Ans. I should call him drunk myself. It might have been three or four days before the 3d February, 1871, since I had seen Mr. Harmon. Sometimes I would see him every two days; sometimes every other day; sometimes every day. I first heard of the deed of trust that evening; the evening that the business was transacted; the evening I saw them

101 going to the city-hall. I asked the blacksmith, Follingsworth, I think his name was, what was going on, and he merely mentioned it about the deed of trust or security, if you cho'se to term it. I thought I would merely ask, seeing them going to the city-hall and coming from there and going to the magistrate's office—Mr. Harmon and Mr. Whittemore.

Ques. How did you come to ask Follingsworth about it?

Ans. He was standing on the pavement there, outside, on 4½ street, near the magistrate's office. He and I walked down together as far as the avenue. I don't recollect seeing him come out of the magistrate's office. I saw him on the pavement. I saw him there while I was wait-

102 ing there. As near as I recollect, I think he came up while I was standing there. I am not certain. Me and him went along down together as far as the avenue. I went down towards the Capitol. I did not notice which way Follingsworth went. I can read and write. I did not notice the sign of the magistrate's office. I do not exactly know where the office was; I did not notice exactly. It was down a piece from the city-hall. I think it was between the city-hall and C street. I have seen a man named Cross, a plasterer; I have heard him called Bob Cross. I did not see him there that evening.

Re-examined:

I don't know whether it was a magistrate's office. I thought it was.

It might have been a lawyer's office. Probably I might have known if I had noticed.

Recross-examined:

I might have waited 15 minutes more or less.

Z. W. BECK.

103 GEORGE M. MILLER, of lawful age, a resident of Washington County, a witness produced and sworn on behalf of the plaintiff, deposeth and saith:

I have known Mr. Harmon about a year. I saw him between the first and eighth of February, 1871. I believe I saw him every day; I cannot say about the 3d. I saw him from the 1st to the 8th, tight every day, to the best of my recollection. I have no interest in this matter at all.

Ques. In your opinion, was he competent to transact business understandingly at that time?

(Objected to.)

Ans. Not business of any consequence.

Ques. Does not liquor affect the senses of some men more than others, even when taken in the same quantities?

(Objected to.)

Ans. Most decidedly.

104 Then, does liquor affect the mind of Mr. Harmon as compared with its effects on the mind of other men?

(Objected to by deft.'s counsel.)

Ans. The same quantity of liquor would not affect other men as it does him. An amount that would not affect other men makes a fool of him—a complete fool.

Cross-examined:

During the time of this transaction I was keeping a grocery and liquor store at the corner of 4½ street and Virginia avenue. During this supposed transaction—for I don't know anything except what I heard—I am not sure I saw Harmon on the 3d Feby., merely that from the 1st to the 7th or 8th I saw him. Mr. Harmon was not working at this time, to my recollection. To the best of my recollection he did work.

105 I think from about the 1st until the 7th or 8th February he was tight. I don't think he was sober even at night. He was in the same condition all the time I saw him. I saw him pretty often about that time. I believe during these eight days that he was so stupid he did know what he was doing. It was not of his own efforts, though of his *his* own doings.

Ques. Did Mr. Harmon deal with you during these 8 days?

Ans. I believe the whiskey he got was from my stock, but I never got paid for *him*.

Ques. Did he drink it at your store?

Ans. I was there too late in the morning to see, but I know he did drink there. I can't tell where I saw Mr. Harmon at this time. He was staggering round the corners. He was one of the biggest fools out of jail.

106 Ques. You never saw him drunk at your store, then, during these eight days?

Ans. Yes, sir; I have often.

Ques. Did he pay for his liquor at that time?

Ans. Not during that time. Somebody else answered for him, or paid for him, or did not pay for him. He never paid for anything during

that time I don't know anything of my own knowledge about the execution of this deed of trust.

GEO. M. MILLER.

Examination adjourned until Wednesday, January 17, 1872, at 1 p. m., to meet at the office of Francis Miller, esq.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

107 JAN. 17, 1872.

CHARLES W. HARMON, of lawful age, a resident of Washington, D. C., the plaintiff in this cause, deposeth and saith:

(Mr. Miller, for defence, excepts to competency of this witness, without waiver of exception.)

Ques. Did you, on the 3d of February, 1871, execute a deed of trust to John R. McConnell, one of the defendants in this cause, to secure the payment of any debt?

Ans. Not to my knowledge.

Cross-examined:

Ques. Did you ever hear that you executed such a deed of trust?

(Plff.'s counsel objects to evidence of matter out of hearing of defts. or one of them.)

Ans. I heard so some time last spring; some time along in the
108 spring; I am not positive what time.

Ques. What time did you first hear of this deed of trust?

Ans. Some time early in the spring, to the best of my knowledge. I cannot tell to a day.

Ques. What month?

Ans. I cannot say what month.

Ques. From whom did you first hear of the deed?

(Question objected to because it is not suggested by anything in the examination-in-chief, and is irrelevant.)

Ans. I don't recollect now who I first heard it from.

Ques. When this first note was about to fall due, did you have any interview with Mr. Johnson in regard to it at Mr. Johnson's store?

(Objected to, unless the question refers to time and place of the
109 interview. This being amended, it is objected to as irrelevant.)

Ans. I might have had some talk with Mr. Johnson. I don't know when the note was to fall due, though.

Ques. Did you have any conversation with Mr. Johnson on the subject of the note?

(Objected to by plf. counsel.)

Ans. Probably I had some conversation with him.

Ques. Did you have any conversation with Mr. Johnson on the subject of this note; that is, the first of the notes that were secured by the deed of trust which you gave to McConnell?

(Objected to because question does not direct witness to time and place of supposed conversation, and on the ground of irrelevancy generally.)

110 Ans. I might have had some talk with him about notes, but I don't remember giving any notes or signing any notes.

Ques. Did you have any conversation with Mr. Johnson on the subject of this note; that is, the first of the notes that were secured by the deed of trust which you gave to McConnell?

(Objected to.)

Ans. In a conversation with Mr. Johnson, I recollect there was some talk about the notes given to McConnell.

Ques. Do you remember what that conversation was?

Ans. There was some talk about notes, but I don't recollect now what the conversation was.

Ques. Was anybody present when that conversation took place?

Ans. I don't recollect now.

Ques. Did you ever ask Mr. Johnson to extend the time of the payment of this note?

111 Ans. I am not positive about asking him to extend the note; not positive about that.

Ques. Did you ever employ Mr. Koones to raise money from the building association for the payment of this debt?

(Objected to because it does not call witnesses attention to time and place.)

Ans. I saw a man of that name, after Mr. Johnson sold my houses, to try and raise money and redeem them somehow or other. It was not for payment of any note.

Ques. Did you ever, just about the time, or a short time before the first of these notes became due, go to Mr. Johnson's store with Mr. McConnell, to see if Mr. Johnson would extend the time of the payment of this note?

(Objected to by plff.'s counsel.)

112 Ans. I don't recollect about going there with him. I recollect some talk about notes. I don't remember where. Mr. McConnell might have been there. I am not positive; he might have been there.

Ques. Might have been where?

Ans. At Mr. Johnson's place of business on the avenue.

Ques. State as near you can the conversation that took place there.

(Objected to.)

Ans. I don't know exactly what conversation took place. I am not positive what conversation took place.

Ques. State as near as you can.

(Objected to.)

Ans. I don't the conversation that took place—what it consisted of. I am not positive.

Ques. Was the subject of the extension of the time of this note spoken of?

(Objected to.)

113 Ans. There was talk of notes. I don't recollect about extension of notes.

Ques. Did you say anything at this time about the deed of trust?

(Objected to.)

Ans. Not to my recollection.

Ques. Did you tell Mr. Johnson you were drunk when you made the deed of trust, then?

Ans. Not to my recollection.

Ques. Do you remember being in Mr. McConnell's office on the 3d of Feb'y when this deed of trust was executed?

Ans. I don't recollect being in his office; don't know where he kept his office at that time.

Ques. Do you know when you got your deed of this property from the register's office?

(Objected to because there is no evidence that he got a deed from there.)

Ans. I do not recollect getting it from there.

114 Ques. Do you know whether Kiernan and Whittemore ever applied to you to secure their notes?

(Objected to.)

Ans. I do not.

Ques. Do you recollect who went with you to Mr. McConnell's office on the day this deed of trust was executed?

(Objected to because there is no evidence that he did go there.)

Ans. I do not.

C. W. HARMON.

JOHN R. MCCONNELL, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the defendants.

I am an attorney at law and a member of the bar of the District of Columbia. I prepared a deed of trust on or about the 3d of Feb-
115 ruary, 1871. The parties to the deed of trust were Mr. Harmon, Charles W., I think, this gentleman here, the plaintiff, I suppose. At the request of the parties I was made trustee.

I think that on the afternoon of the 2d of February, 1871, Mr. Whittemore, Mr. Kiernan, Mr. Harmon, the plaintiff, and Mr. Johnson, the defendant, called at my office, No. 17½ Four-and a-half street, and requested me to draw certain notes to be made by Messrs. Whittemore and Kiernan and to be endorsed by Mr. Harmon, such endorsement of Mr. Harmon to be secured by a deed of trust on certain property said to belong to Mr. Harmon and located in the Seventh ward of this city. I then stated, to the best of my recollection, that I required the deed to
116 Mr. Harmon for the said property in order to give a proper description in the deed of trust. I think Mr. Harmon then stated that he had never taken the deed out of record, and that Mr. Johnson suggested to him at that time that they go to the record office and get the deed.

Ques. Do you remember whether the suggestion came from Mr. Johnson or Mr. Harmon?

(Objected to as leading.)

Ans. I do not remember whether the suggestion came from Johnson or Harmon. I cast the thing off my mind altogether, as I found I had not a sufficient description of the property at that time to draw the deed of trust.

Messrs. Harmon and Johnson returned to my office with the deed, Messrs. Whittemore and Kiernan remaining at my office during
117 their absence. My recollection is that I told them it was then too late to draw the deed; that I would have the papers the next morning at nine or half past nine o'clock. The parties came to my office according to the arrangement and the notes were signed by Messrs. Whittemore and Kiernan, and endorsed by Mr. Harmon in my presence. I think I witnessed the signatures. The effects of the endorsement of the notes were explained by me to Mr. Harmon in connection with the deed of trust, which was explained by me to Mr. Harmon and read over to him word by word at his request. I stated to Mr. Harmon that if these parties, referring to Whittemore and Kiernan, were successful in fishing the shore and paid their rent to Mr. Johnson he could not loose by the endorsement and deed of trust, but that if they failed in paying
118 the rent, and if Mr. Johnson required it, I, as trustee, would have to sell the property, but that it would have to be sold subject to his wife's right of dower. Mr. Harmon said he understood it. The notes and deed of trust were handed over to Mr. Johnson and Mr. Harmon, and Mr. Johnson and the rest of the party left together. I don't

know where they went; I suppose to get the deed executed. Mr. Colby, who occupied a desk in my office, was present, and a gentleman from Prince George's, who was introduced as Shelby Clarke, and a gentleman with Mr. Kiernan. I had never seen Mr. Kiernan before; never had any business transaction or conversation with Mr. Johnson before that time. I was introduced to Mr. Johnson at my office on that day.

119 (Witness here shown papers marked "Exhibits J. C., 1, 2, & 3.")

This body of these notes (Exhibts J. C., No. 1 & 2) and the words written across the face of the notes, and my signature as witness to the signatures of Whittemore and Kiernan are in my handwriting, and the receipts endorsed on the notes as trustee are in my handwriting, and also notice of non-payment and waiver of protest which were drawn at the time of the endorsement of the note.

This paper (Exhibit J. C. No. 3) is in my handwriting, and is the deed of trust spoken of in my testimony.

Ques. What was Mr. Harmon's condition at the time he executed that deed of trust as to being drunk or sober?

120 Ans. My recollection is that he was sufficiently sober to transact the business in hand. If he had not been, I would not have permitted him to execute the papers in my office. I saw nothing in his conduct to indicate that he was drunk, or so much under the influence of liquor as not to know what he was doing. I think he or some of the parties stated the day before that his wife would not sign the deed of trust, and I left his wife's name out of the deed, and explained to him, as I have stated, that it would have to be sold subject to his wife's right of dower. I have no distinct recollection of any separate suggestion by Mr. Harmon as to the deed of trust, except such as I have stated, and his requesting me to read it over. To my recollection

121 there was no occasion for me to call Harmon to order in my office at that time.

Ques. Did you have to call him to order on any other occasion? (Objected to.)

Ans. I have had occasion to call him to order, but I don't recollect that I have in case of any business transaction except it may have been at the transfer of the interest of one of the parties, Kiernan, in the fishing-shore in question, at my office on Louisiana avenue, at which time I may have asked Mr. Harmon not to make so much noise while I was writing, and I may have used expressions of this kind at my office on 4½ street; I don't recollect.

Ques. Did any interview take place between Mr. Harmon and Mr. Johnson at which you were present, in regard to the extension of

122 time of payment of the first of these notes?

Ans. An interview did take place between Mr. Johnson, Mr. Harmon, and myself, I think at Mr. Johnson's office. This was the first interview.

Ques. What took place at that interview?

Ans. Mr. Johnson had given me notice to proceed to sell according to the deed of trust. I either notified Mr. Harmon in writing or met him and requested him to go with me to Mr. Johnson's. We went together to Johnson's with a view of getting an extension of time, as I stated to Mr. Harmon. Being his trustee I did not wish to sell his property. Mr. Johnson made two propositions at that interview to Mr. Harmon in my presence, according to the best of my recollection: First, to

123 extend time of payment of these notes six, twelve, and eighteen months, secured by deed of trust on the same property, in which

his wife should join. Second proposition, to give him a reasonable length of time to borrow the money upon the property and take up the notes at their face, with interest. I think Mr. Harmon and myself left Mr. Johnson's store with the understanding that Mr. Harmon would accept one of these propositions. I remained under that impression until I received a peremptory notice to proceed to sell under the deed of trust, under which notice I did sell the property. Mr. Harmon did not say at these interviews that he did not know he had executed the deed of trust, or that he was drunk when he executed it. I never heard anything
124 of this until proceedings were instituted to set aside the sale.

J R. McCONNELL.

Examination adjourned until Friday the 19th January, 1872, at 10 a. m.

JAN. 19, 1872.

HORACE S. JOHNSON, of lawful age, a resident of Washington, D. C., one of the defendants in this cause, being duly sworn, deposeth and saith:

Examination by Mr. F. Miller:

I am one of the defendants in this action. Mr. Harmon came to my store about the second February last with Mr. Whittemore and Mr. Kiernan and proposed to go their security in renting a fishing-shore in Prince George's County, Maryland. I told him that if he went
125 their security he would have to give a deed of trust on his property. I would not take a simple endorsement on a note. I wanted some other security. He then refused at first; said he did not like to give a deed of trust on his property; said his wife would not join in the deed; gave that as his reason for refusing. I told him I could not accept such security as that; I wanted something that I could hold him on if they did not pay. I could not accept a simple endorsement; I wanted security on his real estate. They all three walked from my desk in the lower part of the store to the front door and there stood talking. They returned in about twenty minutes, I think, and walked back to my desk. Mr. Harmon said he had concluded to give a
126 deed of trust, but his wife would not join in. I told him I would take the deed; that I considered it sufficient security without his wife's signature. He said Mr. Whittemore was a friend of his and poor; that they had previously been on the police force together and he wished to help him along, and asked me if I thought there was any risk. I told him that fishing was an uncertain business; that sometimes they made and sometimes they lost, but that I thought if prudently managed he could not lose, and might make something. Kiernan said he had been in the fishing business before and probably could manage it with success. Harmon seemed to be satisfied with that and the explanation
127 I gave. I then asked who they proposed should draw these papers as they would have to pay the cost, and whom he would appoint as trustee. He said Mr. McConnell was a friend of his, on 4½ street, a lawyer, and they would get him to draw the papers. We all went round from my store to Mr. McConnell's office together, all four of us. He introduced me to Mr. McConnell, and he told Mr. McConnell what he wanted done; he wanted him to draw a deed of trust as security for $600 on two houses on 6½ street near the Island Hall, owned by Mr. Harmon. He appointed Mr. McConnell trustee. Mr. McConnell asked him for his old deed, so that he could draw the deed of trust by it. He told him it was at the city-hall at the record office. He
128 went there and got that deed and brought it back to Mr. McCon-

nell. Mr. McConnell said he would go right to work and draw it up and have it ready for him the next morning, I think.

The next morning I went there and met them there and got the deed of trust and notes. The deed was read over to Mr. Harmon at his suggestion by Mr. McConnell and explained, and the notes signed at the same time. He took the deed to the city-hall to Mr. McNamee and acknowledged it, paid him for it, and handed it over to me.

I then turned over to these gentlemen the outfit, tackle, and fishing-shore; gave them an order for the outfit and they took possession. That concluded the matter as far as I was concerned. They left and I
129 returned to my store, and saw no more of them from that time. On the 2d and 3d of February, 1871, the time of the execution of these papers, I saw nothing out of the way in Mr. Harmon to prevent him from doing business in a rational way. I have known Mr. Harmon for some years, and have frequently done business with him.

Ques. While in the office of Mr. McConnell, did Mr. Harmon make any remarks or suggestions that showed he knew what he was doing?

(Objected to as leading.)

Ans. Mr. Harmon asked Mr. McConnell to read this paper, this deed of trust, which he did, I think, carefully. Mr. McConnell explained to him that if these men did not pay, his property would be responsible. He said he understood it, but his wife would not join in the deed. I
130 told him I would take it without her endorsement. We had several interviews in reference to extending the time, and several conversations about it. One of the conversations was before the notes became due and soon after the fishing season had commenced.

[Some difficulty arose between the gentlemen who were fishing the shore, and Harmon became uneasy about the rent and applied to me for advice. He called to see me and stated that he expected to have this money to pay; that they were unsuccessful, and his property would have to be held for it. I told him I thought so too. I advised him to take the matter into his own hands and protect himself; that I looked to him for the notes as the only responsible person in the
131 crowd. I told him they had rented the fishing-shore on his security solely; that I would not have rented it to them without his security, and that I looked to him. He called to see me after these notes became due or at the time the notes became due, and asked me to give him time to pay it, and asked me to extend the time. He called with Mr. McConnell at my store for the purpose. I told him I would extend the time 6, 12, and 18 months. He agreed to give another deed of trust and pay a portion of the interest, and extend it. I waited a week or ten days and he did not come to carry out this agreement. Finally I went to see him and he told me he was trying to get the money out of the building association; that Mr. Koones and Mr. Haven-
132 ner were endeavoring to borrow the money for him. The money was not procured. He could not get it. I notified the trustee to proceed to sell. The trustee saw Mr. Harmon, who told him to sell; that he could not raise the money. The houses were sold. I heard Harmon tell the trustee to sell; that he could not raise the money.]

(The above in brackets objected to.)

Prior to this time Mr. Harmon never said anything about the invalidity of the deed, or about being drunk at the time it was executed. I never heard about the drunkenness until after the sale. I would not have negotiated with him if I had thought he was under the influence of liquor at the time, or if I had thought he was otherwise than a perfectly rational, sane man.

(Counsel for defendant puts in notice of protest marked "Exhibit J. C., No. 4.")

133 HORACE S. JOHNSTON cross examined:

Ques. Do you mean to say, Mr. Johnson, that Mr. Harmon was not under the influence of liquor when he signed that deed of trust and made those notes?

Ans. According to my judgment, he was not. If he was, it is more than I am aware of. I supposed that I was dealing with a sober man.

Ques. Will you please state when and where you heard Mr. Harmon tell the trustee to go on and sell?

Ans. This took place in Mr. McConnell's office, on Louisiana avenue. I cannot state whether any one else heard it. The conversation was private, probably. It was after he had failed to procure the money to take up the notes. It was before the sale. He requested the trustee to sell.

134 Ques. Who went with Mr. Harmon to the city-hall to get his deed?

Ans. I went with him, and I think Mr. Whittemore. I am not certain, but I think he went along.

Ques. Did Kernan and Whittemore hear what passed between you and Harmon on the 2d February, 1871?

Ans. I think all four of us were present at my store. I presume they all heard what was said, as they were all interested.

Ques. Can you say positively that Harmon was not under the influence of liquor at the time he signed that deed of trust?

Ans. I think I can state positively from my recollection and judgment that he was not.

Ques. Was any one present besides yourself, Kiernan, Whittemore, and Harmon at your store on February 2, 1871?

135 Ans. I do not recollect whether any else was present. Persons were passing in and out all the time.

Re-examined:

After the matter was all settled, the papers signed and recorded, at McConnell's office, some of us suggested we take a drink. I declined at first, but then said I would take a drink. We went out of McConnell's office and took a drink at a restaurant on the corner of 4½ street and C. I took a drink at their request. After we took the drink I wished them success, and they invited me to visit the fishing-shore. They may have walked with me to the avenue. They then left, and I saw no more of them.

Recross-examined:

Mr. Harmon told the trustee to sell after both notes were due
136 I think. He said he could not raise the money; he would have to sell for cash. He said that in my presence, and said it to me once or twice.

CHARLES MCNAMEE, esq., of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the defendants, deposeth and saith:

By Mr. Miller, for defense:

(Witness here shown Exhibits J. C., No. 3.)

That is my handwriting. I take it for granted I received this acknowledgement. I am satisfied I did or I would not have certified it.

I took this acknowledgment. If Harmon had been drunk I would not have taken it. I don't know whether he was drunk or sober; don't recollect the man. If the man had been so drunk as to attract my attention, I would not have taken it.

(Witness proposes to expunge a certain , because he did not mean it as words testimony. Counsel for plaintiff objects. The words are, "I don't know whether he was drunk or sober.")

137 Whereupon witness left. Counsel for defdt. states that witness was not subpœna'd.

Examination adjourned until Tuesday, Jan. 23, 1872, at 3 p. m.

Further adjourned until Jan. 25, at 3 p. m.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

JAN. 25, '72.—Continuation of cross-examination:

Ques. Did you not merely say that you would have to sell, or words to that effect?

Ans. He said "sell the property; he could not raise the money," to the best of my recollection.

H. S. JOHNSTON.

CHARLES MCNAMEE, of lawful age, a witness produced and sworn on behalf of the defendants, a resident of Washington, D. C., deposeth and saith:

I appear'd here by virtue of a subpœna. It was served on me yesterday. I don't think I was subpœna'd before yesterday. I was requested to come. (Exhibits J. C., No. 3., here shown to witness.) This
138 deed was acknowledged before me. Mr. Harmon, the grantor of the deed, appeared sober to me when he acknowledged it.

Ques. What is your custom in taking the acknowledgment of deeds?

(Objected to by plff.'s counsel.)

Ans. After it is executed I ask the parties if it is their act and deed.

Ques. Is it possible that Mr. Harmon when you took his acknowledgment was drunk as to be unconscious of what he was doing?

(Objected to because it is .)

Ans. He was a stranger to me. He appeared to know what he was doing, but he might have been drunk if he was a drinking man given to liquor. Being a stranger to me I did not know. Never saw him before that I know of. If he had been so drunk as to attract my attention, I don't think I would have taken his acknowledgment.

Ques. Is it your custom to ask persons whose acknowledgments you take if they understand the deed?

(Objected to because custom in such cases is inadmissible as evidence.)

Ans. I simply ask them, "Is this your act and deed." If there is a relinquishment of dower on the part of a lady, I explain it to her.

CHS. MCNAMEE.

139 *Hearing.—D. B. 3, p. 24.*

*Submission of cause.—Filed Mar. 14, 1872.*

In the supreme court of the District of Columbia, the 14th day of March, 1872.

HARMON
*vs.*
JOHNSON & MCCONNELL. } 2482. Eq. doc. 11.

We hereby agree to submit this case upon the pleadings and evidence without argument.

FRANCIS MILLER,
*Of Counsel for Defts.*
M. THOMPSON,
*Plf.'s Solr.*

140 *Order directing issues to circuit court.—Filed Mar. 23, 1872.*

In the supreme court of the District of Columbia, the 23rd day of March, 1872.

CHARLES W. HARMON, PLAINTIFF,
*vs.*
HORACE S. JOHNSON & MCCONNELL, DEFTS. } No. 2482. Eq. doc. 11.

This cause standing ready for hearing, and being submitted upon the amended and supplemental bill of complaint and answers of the defendants, and evidences, &c.; and upon consideration whereof, it is this 23d day of March, 1872, by the court ordered, that the following issue be tried before a jury of the supreme court of the District of Columbia, under the direction of the said court, to wit:

141 Whether or not the plaintiff was, at the time of the execution of the deed of trust and notes mentioned in the bill of complaint in this cause, capable of executing a valid deed or contract.

And that upon the trial of the said issue the plaintiff in this cause shall be plaintiff, and the defendants here shall be the defendants.

By the court.

A. WYLIE.

*Supplemental bill.—Filed June 28, 1872.*

In the supreme court of the District of Columbia, the 26th day of June, 1872.

CHARLES W. HARMON, PLAINTIFF,
*vs.*
HORACE S. JOHNSON, JOHN R. MCCONNELL, & Alexander Sharp, defendants. } No. 2482. Equity doc. 11.

The supplemental bill of complaint of the said plaintiff humbly shows—

142 That heretofore he filed his bill of complaint in this court against the said Johnson & McConnell, praying, amongst other

things, for an injunction to restrain said Johnson & McConnell from selling the property mentioned in the said bill, and that said McConnell should be decreed to release the deed of trust mentioned in said bill, and for general relief. And other proceedings were had, as by the same proceedings now in this court will appear.

And afterwards, and upon leave of the court first had, &c., the plaintiff filed his amended and supplemental bill of complaint in said cause, stating and charging that when he executed the said deed of trust and notes he was so drunk that he did not know what he was doing, and did not know that he was making his said property liable for the
143 payment of said notes, or that he was incurring any obligation to pay them; and that afterwards, to wit, on the 21st day of Sept., 1871, the said McConnell sold the said property at public auction, to said Johnson, at and for the sum of $600, and that he, the said Johnson, claimed the said property as his own, and had given the plaintiff notice to leave the said property, &c., and that said Johnson had signified his determination to oust the plaintiff and to take possession of the said property, &c., and praying that the said sale of said property to the said Johnson should be annulled and set aside; and that said McConnell should be enjoined from making any conveyance of said property to said Johnson, and that if said McConnell had
144 made any conveyance of said property to said Johnson, such conveyance should be annulled and set aside, and that said notes should be decreed null and void; and that said Johnson should be enjoined and restrained from taking possession of, or in any way interfering with, the said property, or with the plaintiff, or any tenant thereof in the free use and enjoyment of said property, and for general relief; and other proceedings were had as by the same proceedings now in this court will appear; that is to say, the defendants, Johnson & McConnell, answered said amended and supplemental bill, and issue was joined and testimony taken, and the cause came on to be heard and was submitted
145 upon bill and amended and supplemental bill, answers of said Johnson & McConnell, and the depositions, evidences, and exhibits, and upon consideration whereof it was afterwards, to wit, on the day of , 1872, by the court, (Wylie, judge,) ordered, that the following issue should be tried before a jury of the supreme court of the District of Columbia, under the direction of the said court—that is to say, "Whether or not the said plaintiff was, at the time of the execution of the said deed of trust and notes, capable of executing a valid deed or contract;" and that upon the trial of the said issue the plaintiff in this cause should be the plaintiff, and the said Johnson & McConnell should be defendants.

146 And the plaintiff has lately discovered, and now charges by way of supplement to his aforesaid original and amended and supplemental bill of complaint—

1. That afterwards, to wit, on the day of , 1872, a jury of the said supreme court was empanelled and sworn, under the direction of the said court, to try the said cause, and that testimony and counsel were fully heard on both sides; and the said jury, after instructions from the court, (McArthur, judge,) retired, under the direction of the court, to consider of their verdict, and, after long deliberation, came into court and declared their utter inability to agree upon a verdict, and were therefore and thereupon discharged from the further consideration of the case; and the said issue is still pending and
147 undetermined in said court, and will be for trial again at the next Oct. term of the said court.

2. That soon after the said filing of the said amended and supplemental bill, and before the said issue at law was ordered, the said Johnson brought suit before A. E. L. Keese, (a justice of the peace,) against the plaintiff, to obtain possession of said property, and upon the trial before said Keese the said Johnson exhibited a paper writing, &c., purporting to be a deed from said McConnell for said property, and upon which, &c., the said Keese rendered judgment in favor of said Johnson for the possession of the said property; and from which judgment the now plaintiff appealed to the supreme court of the Dis-
148 trict of Columbia, and gave the requisite appeal-bond; but before the then next circuit court, and before the said appeal could be heard or disposed of, the said issue at law was ordered, and the now plaintiff therefore took it granted that the said Johnson would not presume to disturb him in the possession of the said property before the determination of the said issue at law, and did not therefore prosecute his said appeal, as he otherwise would have done; but notwithstanding the pending and non-determination of the said issue as aforesaid, the said Johnson, by his attorney, to wit, on the 27th Ap'l, 1872, and without any previous notice or knowledge of any such intention, and without evidence or inquiry into the merits, caused the said appeal to be docketed, and the said judgment of said Keese to be
149 affirmed, (see No. 9603 at law;) and that as soon thereafter as the fact of such docketing and affirmation of said appeal and judgment became known to the plaintiff or his counsel, to wit, on the 13th day of May, 1872, the plaintiff, by M. Thompson, his atty., entered a motion to vacate the said judgment of affirmation and to re-instate the said case; but that said attorney had been for some time prior thereto, and was then, in feeble health, and was consequently, and owing to the unusual shortness of the term of the court and the anxiety of the presiding judge (McArthur) to leave for Europe, was not able to have said motion heard, and said motion *heard, and said motion* is still pending and undetermined; and to the very great surprize of the plaintiff
150 the said Johnson afterwards, to wit, on the 24th day of June, 1872, caused a writ of habere facias possessionem and fieri facias to be issued in said cause No. 9603, directed to the said Alexander Sharp, (who is marshal for the said District,) thereby commanding the said Sharp, as marshal as aforesaid, to dispossess the plaintiff and to put the said Johnson in possession of the said property, &c.; and the said marshal, by one of his deputies, has notified the plaintiff of the determination of said marshal to oust the plaintiff and to put the said Johnson in possession of the said property on Saturday or Monday next at farthest. The ouster of the plaintiff from the said property would leave him and his family without house, home, or other property to go to, or to shel-
151 ter them, and, his wife being in very delicate health, and nervous and excitable, such ouster would, as the plaintiff verily believes, endanger her life & health, and certainly entail irreparable loss, cost, and damage upon the plaintiff.

PRAYER.

And the plaintiff therefore prays as follows:

1. That he may have leave to file this his second amended bill of complaint in this cause.

2. That the said writ of habre facias possessionem and fieri facias may be recalled, vacated, and set aside.

3. The the said Johnson and Sharp, their and each of their agents, attorneys, and deputies, may be enjoined and restrained from in any way

interfering with the said property or with the plaintiff, his
152 family, tenants, or agents, in the use or enjoyment of the said property.

4. And that the plaintiff may have such further and other relief in the premises as the nature of the case may require.

C. W. HARMON.

COUNTY OF WASHINGTON,
*District of Columbia, ss:*

On this the 27th day of June, 1872, before me, Nathan K. Ellsworth, a notary public in and for the county and District aforesaid, personally appears the above-named Charles W. Harmon, and makes oath that he has heard read the foregoing supplemental bill by him subscribed, and knows the contents thereof, and that the facts therein stated upon his personal knowledge are true, and that the facts therein stated upon information & belief he believes to be true.

[SEAL.] NATHAN K. ELLSWORTH,
*Notary Public.*

153 *Summons to answer sup'l bill.—Issued June* 28, 1872.

In the supreme court of the District of Columbia, June 28th, 1872.

CHARLES H. HARMON, COMPLAINANT, *against* HORACE S. JOHNSON ET AL., DEFENDANT. } No. 2482. Equity doc.

The President of the United States to Horace S. Johnson, John R. McConnell, Alexander Sharpe, defendant.

You are hereby commanded to appear in this court, at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the supplemental bill, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief-justice.

[SEAL.] R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

154 *Restraining order.—Filed June* 28, 1872.

A supplemental bill praying an injunction to restrain the proceedings at law mentioned in the bill is this day filed by leave of court first had. Hearing is fixed for Tuesday, July 2nd, 1872, at 12 o'clock M. Until further order you are hereby restrained as prayed.

By order of the court.

By order of Justice Humphreys, 1872, June 2nd.

Attest: R. J. MEIGS,
By R. J. MEIGS, JR.,
*Asst. Clerk, &c.*

CHARLES H. HARMON
*vs.*
HORACE S. JOHNSON.

Issued June 28th, 1872.
Service acknowledged.

ALX. SHARP,
*U. S. Marshal.*

JUNE 38TH, 1872.

155 *Answer of deft. Johnson to supp'l bill.—Filed July* 23, 1872.

In the supreme court of the District of Columbia, the 23' day of July, 1872.

CHARLES H. HARMON
*vs.*
HORACE S. JOHNSON ET AL. } No. 2482. Eq. doc 11.

The answer of Horace S. Johnson, defendant, as aforesaid, to the so-called supplemental bill herein filed.

This defendant, for answer, respectfully says:

1. That the plaintiff Harmon did apply to this court for an injunction to restrain the defendant McConnell from selling the real estate in controversy in this cause, which the court refused to grant, and thereafter the said property was sold and this defendant became the purchaser thereof.

2. This defendant admits that after the plaintiff had, by giving
156 security on his real estate for certain notes due said defendant, induced him to receive said notes, he did set up the defence of drunkenness to avoid paying the same, and that said defence is yet before this court.

5. This defendant admits that he did obtain judgment for the possession of the property purchased by him as hereinbefore stated, before Justice Keese, and that the plaintiff in this cause gave notice of an appeal, but he avers that said appeal was never perfected, and in accordance with the law he directed said cause to be docketed, and this court affirmed the said judgment of Justice Kesse, and it is now the judgment of this court.

4. This defendant avers that the plaintiff is a man whose con-
157 duct in this transaction has been such that he can have no reliance on his disposition to meet his liabilities, and he therefore was unwilling that he should remain in possession of the property purchased by him, the defendant, as he would have no security for the rents to which he is entitled from said property, and he therefore execution to issue in order that he might be put in possession of the same.

4. The motion of the plaintiff's attorney to set aside the judgment on the appeal from Justice Keese was not pressed to hearing by him, although this defendant is informed, and believes, that the said attorney was repeatedly in court after it was filed, and this defendant denies that the plaintiff can now take advantage of his own laches.

158 5. And this defendant specifically denies all the allegations of said so-called supplemental bill filed herein not expressly admitted in this answer; and, having fully answered, asks to be hence dismissed with his reasonable costs herein incurred.

H. S. JOHNSON.

Subscribed and sworn to before me this 18th of July, 1872.
R. J. MEIGS, *Clerk.*
By L. P. WILLIAMS, *Asst. Clerk.*

*Decree for injunction.—Filed July* 25, 1872.

In the supreme court of the District of Columbia.

CHARLES H. HARMON, PLAINTIFF,
*vs.*
HORACE JOHNSON ET AL., DEFENDANTS. } No. 2482. Equity doc. 11.

Upon hearing the supplemental bill filed in this cause, to wit,
159 on the 28th day of June, 1872, and the answer of said Johnson thereto, and argument of the solicitors of the respective parties,

and consideration whereof, it is, this 25th day of July, 1872, ordered, adjudged, and decreed, that the defendants, Horace S. Johnson and Alexander Sharp, their and each of their agents, attorneys, and deputies, are hereby enjoined and restrained from any interference with the property mentioned in the proceedings in this cause, or from any disturbance or interference with the plaintiff, his family, tenants, agents, or occupants of said property, or the plaintiff, in his or their use or occupation of said property, until after the trial at law, for the possession, and until after the final trial of the issue at law, as directed by this court, and a final decree in favor of said Johnson in this cause, and that the
160 plaintiff shall give bond, with surety, or sureties, to be approved by this court, or one of the judges thereof, conditioned for the payment of rent for said property in case the said issue at law should be found against the plaintiff and a final decree rendered against him in this cause.

D. C. HUMPHREYS, *Justice.*

*Injunction bond.—Filed July* 29, 1872.

In the supreme court of the District of Columbia, the 26th day of July, 1872.

CHARLES H. HARMON, PLFF., *vs.* HORACE S. JOHNSON ET AL., DEFTS. } No. 2482. Equity doc. 11.

Whereas, by a decree passed in this cause on the 25th day of July 1872, it was "ordered, adjudged, and decreed, that the defendants,
161 Horace S. Johnson and Alexander Sharp, their and each of their agents, attorneys, and deputies, be, and they are hereby, enjoined and restrained from any interference with the property mentioned in the proceedings in this cause, or from any disturbance or interference with the plaintiff, his family, tenants, agents, or occupants of said property, in his or their use or occupation of said property, until after the judgment at law for the possession, and until after the final trial of the issue at law, as directed by this court, and a final decree in favor of said Johnson in this cause, and that the plaintiff shall give bond, with surety, or sureties, to be approved by this court, or one of the judges thereof, conditioned for the payment of rent for said property
162 in case the said issue at law should be found against the plaintiff and a final decree rendered against him in this cause.

And now the said Harmon, and John Batters, his surety, for themselves and each of them, their and each of their heirs, executors, and administrators, appear and submit to the jurisdiction of the court, and hereby undertake to pay rent to the said Johnson for the real property mentioned in the proceedings from this day to the final trial and determination of the said judgment at law, and the final trial and determination of the said issue at law, and a final decree in this cause against said Harmon, should such final trial of said judgment issue at law, and decree in this cause be against the said Harmon & in favor of said Johnson.

C. W. HARMON.
JOHN BATTERS.

The above bond is satisfactory to me.

FRANCIS MILLER,
*Atty. for H. S. J.*

Approved July 31, 1872.

D. C. HUMPHREYS,
*Justice.*

163 *Verdict of jury.—Filed Dec.* 3, 1872.

In the supreme court of the District of Columbia, holding a circuit court, Octo. term, 1872.

WEDNESDAY, *Nov.* 27, 1872.

Session resumed pursuant to adjournment; Chief-Justice Cartter presiding.

CHARLES H. HARMON, COMPLT., *vs.* HORACE S. JOHNSON AND JOHN R. MCCONNELL, defts. } No. 2482. Eq. doc. 11. Cal. 132.

And now come here as well the complainant, by his attorney, Mr. Thompson, as the defendants, by their attorneys, Messrs. Riddle & Miller, and a jury of good and lawful men of this District, to wit, Enoch Beard, Willim R. Riley William H. Barron, Richard Rothwell, sr., Peter May, A. Ross Ray, John B. Terton, William H. Upperman, William Lord, Albert G. Hall, Henry Thorn, and Alexander Gordon,

164 who, being sworn to well and truly try, and true answers make to the issues sent from the equity court, on their oath say, in answer to the said issue, that the complainant was not, at the time of the execution of the deed of trust and notes mentioned in the bill of complaint in this case, capable of executing a valid deed or contract.

A true copy. Test:

R. J. MEIGS, *Clerk*,
By J. JAY CAMP,
*Asst. Clerk.*

*Bill of exceptions.—Filed Dec.* 29, 1872.

In the supreme court of the District of Columbia, the 29 day of Decr., 1872.

CHARLES W. HARMON *vs.* HORACE S. JOHNSON & JOHN R. MCCONNELL.

165 This is an issue sent down from the equity court in equity cause No. 2482. The issue is stated by the court in the following language: "Whether or not the plaintiff was, at the time of the execution of the deed of trust and notes mentioned in the bill of complaint in this cause, capable of executing a valid deed or contract."

It appears from the papers in eq. cause No. 2482 that a bill was filed by Mr. Hine, solicitor for the complainant, Harmon, on the 3rd of August, 1871, to enjoin the sale of certain property belonging to him under a deed of trust made by him to the defendant McConnell, to secure the payment of two promissory notes dated Feb. 3rd, 1871, made by Z. Whittemore and Kiernan to Horace S. Johnson, which notes were given in payment of the rent reserved in a lease from said

166 Johnson to said Whittemore & Kiernan of a fishing-shore on the Potomac. This property consists of two houses and the ground on which they stand.

The grounds on which the injunction was asked for were:

1. That the trustee offered the property for sale in mass instead of selling each house singly.

2. That the description of the property did not fairly present its advantages.

3. That the advertisement did not give the requisite notice of sale.

4. That the defendant Johnson induced the plaintiff to execute the deed by "covin, artifice, fraud, and deceit," by representing to him that the deed of trust was a "mere matter of form;" that he would not press the notes, &c.

5. That the makers of the notes had a valid defence against their enforcement.

167 6. That on the day, and before the time of executing the deed, and for several days prior thereto, he had been using intoxicating liquors to excess; that he was not addicted to their use; that he is informed by his friends, and verily believes, he was intoxicated at the time of signing said deed; and that the defendants, knowing such to his condition, took advantage of it to persuade him to sign said deed.

To this bill the affidavits of Cross & Wallingford are appended and made part thereof by reference, in which the affiants say that Harmon was too drunk at the time of signing the deed to know what he was about.

The bill prays that McConnell be required to release said deed of trust, &c., the defendants; and, on hearing, the motion for an injunction was overruled, on the 5th of August, 1871.

168 The trustee afterwards, Sept. 21st, 1871, proceeded to sell the property under the deed of trust, and on the 31st of October, 1871, Mr. Thompson, as solicitor for the plaintiff, filed an amended and supplemental bill, in which the plaintiff swears that he has lately discovered and now charges, by way of amendment and supplement to his aforesaid bill of complaint, that when he executed the said deed and notes he was so drunk that he did not know what he was doing, and did not know that he was making his said property liable for the payment of said notes, or that he was incurring any obligation to pay them.

The defendants answered the said amended bill, issue was joined, and testimony taken, and the cause was submitted without argu-

169 ment; whereupon the justice holding the special term sent down the above issue to be tried by a jury.

This issue coming on to be tried, the plaintiff, to maintain his side thereof, offered evidence tending to prove that before, at, and after the time of making said deed and notes, he, the said plaintiff, was in the habit of using intoxicating liquors to excess, and was more or less under the influence of such stimulants all the time; that, at the date of said deed, he had been drinking freely, and several witnesses testified that they did not consider him fit to do business. Kiernan and Whittemore, the makers of the said notes secured by the deed of trust, and one other witness, testify that they were present at the making of the deed, &c., and that Harmon was very drunk, so drunk that they

170 did not consider him fit to transact business or capable of executing a deed or contract.

Dr. Riley testified that Harmon was suffering under a disease called alcoholism, a disease of the brain and nerve cortres, and was in such a condition that he would not make a contract with him, and that he was not competent to contract at the time of making the deed; and that he saw him almost daily about that time, and that he was then laboring under alcoholism.

On cross-examination he stated that he observed this disease in September following the execution of the deed, and said that he did not make a contract with Harmon, because on account of the effects of his

intemperance he did not want him to do his work. Other wit-
171 nesses testified to the end that the plaintiff was not in condition to do business, and to the effect that he was very drunk on the day of the execution of the deed and for some time prior thereto.

And the plaintiff rested.

The defendant, to maintain his side of the above issue, offered the evidence of McConnell, who drew the deed and notes, tending to prove that Harmon came to his office with Johnston, Kiernan, and Whittemore, to have the deed prepared; that he, the witness, said that he must have Harmon's deed to obtain the description of the property; that Harmon said he had not taken it out of the recorder's office, and went to the city-hall and returned with the deed; and that Johnston suggested to him at the time that they go to the record office and
172 get the deed, and that they went and came back with the deed. That he prepared the deed, read it over to Harmon, at his request, and explained it to him, and he expressed himself satisfied with it, and he signed the deed, whereupon the deed and the notes were given to Johnston.

The same witness, and Mr. McNamee, who received Harmon's acknowledgment of the deed, both testified that in their opinion Harmon was sober when they saw him sign and acknowledge the said deed, and that they would not have permit' him to make or acknowledge any paper if they had thought he was drunk.

Evidence was also given tending to prove that Harmon said nothing of the deed being invalid because of his drunkenness till some time after the property was sold, and also that about six weeks
173 after the deed was executed he signed a paper, which was put in evidence, agreeing to the assignment of the lease for which the notes secured by the deed of trust were given. It was also proved that McConnell & Johnston were entire strangers up to the date of this transaction.

And the defendant rested.

Whereupon the defendant prayed the court to instruct the jury as follows:

1. As the issue does not present the questions of fraud, imposition, duress, or undue influence, the jury are not at liberty to consider either of them, but must pass solely upon the capacity of Harmon to make a valid deed or contract.

2. To set aside a deed or contract on account of drunkenness,
174 it is not sufficient that the party is under undue excitement from liquor. It must rise to that degree which may be called excessive drunkenness, where the party is utterly deprived of his reason and understanding.

3. The jury must find for the defendants unless they believe that the plaintiff was in such a state of intoxication as not to know what he was doing when he signed the deed in controversy.

4. If the jury believe from the evidence that the defendant knew he was signing a deed of trust upon his property, they must find for the defendant.

The first prayer was granted unconditionally.

The court held that if the word utterly in the 2nd prayer in-
175 tended to express an entire loss of reason in all respects, that it was not good law, but if it meant that the defendant must be incapable of understanding the terms and conditions of the deed of trust in order to avoid it, then it was good law, and so modified it was given to the jury.

The 3rd and 4th prayers were granted subject to the following modification, that it was not sufficient to make the deed a valid one for the defendant to know that he was signing a deed of trust on his property, but he must have been in such a condition of mind as to be able to know and understand the terms and conditions of said deed. It is not necessary in order to render the deed of the defendant invalid,
176 that, at the time of its execution and acknowledgment, he was entirely demented by drink, but his act will be rendered void if he was in such a condition of mind that he could not comprehend what were the terms and conditions of the instrument.

To which modifications of the said instructions the defendants excepted, and their exception was allowed, and they prayed the court to sign and seal this their first bill of exceptions, and the same is hereby done, this 28th day of December, 1872.

D. K. CARTTER,
*Chf. Justice.* [SEAL.]

*Decree overruling exceptions.—Filed Feb'y* 20, 1873.

CHAS. W. HARMON
*vs.* } 2482. Equity.
HORACE S. JOHNSTON ET AL.

This cause coming on to be heard on the exceptions to the rulings of the justice holding the circuit court, it is, this 20th day of February, 1873, ordered that said exceptions be overruled.

By the court:

A. WYLIE.

177 MONDAY, *April* 21, 1873.

Proceedings before the supreme court of the District of Columbia, in general term, commencing on the third Monday, 21st day of April, 1873. Present, Justices Olin, Wylie, Humphreys, and MacArthur.

THURSDAY, *May 1st*, 1873.

Session resumed pursuant to adjournment; present, Chief-Justice Cartter, and Justices Olin, Wylie, Humphreys, and MacArthur.

CHARLES W. HARMON, PLFF.,
*vs.* } 2482. Equity docket 11.
HORACE S. JOHNSON, DEFT.

The complainant, by his solicitor, M. Thompson, presents the following writing to the court: "The said Charles Harmon, by M. Thompson, his solr., moves the court to affirm the order or decree, for non-compliance with the ninety-fourth common-law rule of court."

M. THOMPSON,
*Solr. for Harmon.*

178 MONDAY, *Sept'r 22d*, 1873.

Proceedings before the supreme court of the District of Columbia, in general term, commencing the fourth Monday of September, 1873, the 22d. Present, Chief-Justice D. K. Cartter and Justices Olin, Wylie, and Humphreys.

SATURDAY, *December 6th*, 1873.

Session resumed pursuant to adjournment. Present, Chief-Justice Cartter, and Justices Wylie and MacArthur.

HARMON *vs.* JOHNSTON. } 2482. Equity docket 11.

This cause coming on to be considered upon the record, and having been argued pro and con, by respective counsel, it is, this 6th Dec., 1873, ordered and decreed that the order of the chancellor overruling the exceptions of defendant to the rulings of the justice at trial before jury be, and hereby is, affirmed.

179 *Decree of sp'l term.—Filed Jan'y* 15, 1874.

In the supreme court of the District of Columbia, the 15th day of January, 1874.

CHARLES W. HARMON, COMPLAINANT, *vs.* HORACE S. JOHNSON AND JOHN R. MCCONNELL, respondents. } No. 2483. Equity doc. 11.

This cause came on to be heard upon the original bill, and the amended and supplemental bills of complaint, and answers of the defendants, and the evidences, and the verdict of jury of the supreme court of the District of Columbia, upon the trial of the issue ordered by this court, and the decree of the said supreme court in general term, affirming the order of this court overruling the exceptions to the ruling of the justice holding the said circuit court upon said trial of said issue, and
180 upon consideration whereof, it is this fifteenth day of January, in the year eighteen hundred and seventy-four, by the court ordered, adjudged, and decreed, that the deed of trust mentioned in the bill of complaint, and also the said Harmon's indorsements upon the promissory notes mentioned in said deed be, and the same are hereby, vacated, annulled, and set aside; and that the said McConnell be, and he is hereby, ordered to execute, acknowledge, and deliver to the said Harmon a good and sufficient deed of release of the said deed of trust within the next thirty days, and that the said Johnson be, and he is hereby, ordered to execute, acknowledge, and deliver to the said Harmon a good and sufficient quitclaim deed of the property mentioned in the said deed of trust within the next thirty days; and in default thereof that this decree shall operate as such conveyance; and that each party pay his own costs.

By the court:

A. WYLIE.

181 MONDAY, *January* 5, 1874.

Proceedings before the supreme court of the District of Columbia, in general term, commencing the first Monday of January, 1874. Present, Chief-Justice Cartter, Justices Olin and MacArthur.

WEDNESDAY, *February* 4, 1874.

Session resumed pursuant to adjournment. Present, Justices Olin, Wylie, Humphreys, and MacArthur.

CHARLES W. HARMON, PLFF., *vs.* HORACE S. JOHNSON, DEFT. } 2482. Equity docket 11.

This cause coming on to be heard upon the record of the equity court,

and was submitted to the court, whereupon it is ordered, adjudged, and decreed that the decree of the said equity court of Jan'ary 15, 1874, be, and the same is hereby, in all things affirmed, with costs.

182 And from this decree the defendant prays an appeal to the Supreme Court of the United States here now in open court, and the same is allowed.

*Appeal-bond to S. C. U. S.*

In the supreme court of the District of Columbia, the 17th day of October, 1874.

CHARLES W. HARMON *vs.* HORACE S. JOHNSTON ET AL. } No. 2482. Eq.

Know all men by these presents that we, David A. Windser and James G. Smith, are bound unto the above-named Charles W. Harmon in the sum of two hundred & fifty dollars, to be paid to the said Charles W. Harmon, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 17th day of October, 1874.

Whereas the above-named Horace S. Johnson hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Horace S. Johnston shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) DAVID A. WINDSER.
JAS. G. SMITH.

Sealed and delivered in presence of—

Approved.
(Signed) A. WYLIE.

*Clerk's certificate.*

Clerk's office, supreme court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 17th day of October, 1874.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 212. Horace S. Johnson, appellant, vs. Charles W. Harmon. Dist. of Col. sup. court. Filed 24th October, 1874.

# Supreme Court of the United States.

*No. 212.*

HORACE S. JOHNSON, APPELLANT,

*vs.*

CHARLES W. HARMON.

*Appeal from the Supreme Court of the District of Columbia.*

BRIEF OF APPELLANT.

A. G. RIDDLE,
FRANCIS MILLER,
*Solicitors for Appellant.*

Judd & Detweiler, Printers.

# Supreme Court of the United States.

*No. 212.*

HORACE S. JOHNSON, APPELLANT,

*vs.*

CHARLES W. HARMON.

*Appeal from the Supreme Court of the District of Columbia.*

BRIEF OF APPELLANT.

*Statement of the Case.*

The appellee filed his bill in the court below, setting forth that a certain deed of trust executed by him, conveying certain lands therein named, to secure the payment of certain notes to the appellant, was obtained from him by fraud, covin, &c., and prayed for an injunction against the sale of the said property by the trustee, a release of the deed of trust, &c.

On the hearing the injunction was refused. By supplement and amendment the appellee then set up that when he executed the above-mentioned deed of trust "he was so drunk that he did not know what he was doing, and did not know he was making his property liable for the payment of said notes, or that he was incurring any obligation to pay them."

The answers of appellant and McConnell, the trustee,

deny all charges of fraud, and that the appellee was intoxicated, and aver that he was perfectly aware of the nature and contents of the deed of trust.

After replication both parties took testimony, and the case was submitted on the pleadings and evidence without argument; whereupon the court ordered "that the following issue be tried before a jury of the Supreme Court of the District of Columbia, under direction of said court, to wit:

"*Whether or not the plaintiff below was, at the time of the execution of the deed of trust and notes mentioned in the bill of complaint in this cause, capable of executing a valid deed or contract.*"

Rec. p. 35.

On the trial of this issue before a jury under the direction of Chief Justice Cartter, the Court was asked by the appellant to instinct the jury as follows:

1. "As the issue does not present the questions of fraud, imposition, duress, or undue influence, the jury are not at liberty to consider either of them, but must pass solely upon the capacity of Harmon to make a valid deed or contract.
2. "To set aside a deed or contract or account of drunkenness, it is not sufficient that the party is under undue excitement from liquor. It must rise to that degree which may be called excessive drunkenness, where the party is utterly deprived of his reason and understanding.
3. "The jury must find for the defendant unless they believe that the plaintiff was in such a state of intoxication as not to know what he was doing when he signed the deed in controversy.
4. "If the jury believe from the evidence that the defendent knew he was signing a deed of trust upon his property, they must find for the defendant."

The first prayer s granted unconditionally.

"The court held that if the word utterly in the 2d prayer intended to express an entire loss of reason in all respects, that it was not good law, but if it meant that the defendant

must be incapable of understanding the terms and conditions of the deed of trust in order to avoid it, then it was good law; and, so modified, it was given to the jury.

"The third and fourth prayers were granted subject to the following modification, that it was not sufficient to make the deed a valid one for the defendant to know that he was signing a deed of trust on his property, but he must have been in such a condition of mind as to be able to know and understand the terms and conditions of said deed. It is not necessary in order to render the deed for the defendant invalid, that, at the time of its excution and acknowledgment, he was entirely demented by drink, but his act will be rendered void if he was in such a condition of mind that he could not comprehend what were the terms and conditions of the instrument."

Record, pp. 43–4.

The motion for a new trial on these exceptions was properly made before the justice holding the equity court.

Jeremy's Eq. Ju., 297.
2 Maddock's Ch., 480.
Smith's Ch. Pr., 84 to 89.

This motion was refused and on appeal to the general term this refusal was sustained. The case then went to the special term and a decree was passed vacating and annulling the deed of trust and the endorsement of the notes, directing the trustee to release the deed of trust, and requiring Johnson to execute a quit claim deed of the property to Harmon. On appeal to the general term this decree was affirmed, and from that decree so affirmed appeal was taken to this Court.

*Assignment of Errors.*

The Court erred:

1. In refusing the second, third and fourth prayers, and in making the modifications thereof above set forth.

2. In charging that it "was not sufficient to make the deed a valid one for the appellee to know that he was signing a deed of trust on his property, but he must have been in such a condition of mind as to be able to *know and understand the terms and conditions of the instrument.*"

POINTS.

1. It is obvious that unless there has been a sudden and and unheard of change in the law, there was grave error in the ruling of the court. One of the latest text writers thus summerizes the law on this subject: "If a man be drunk to the extent of *complete intoxication* so as to be no longer under the guidance of reason, or is in a state of excitement from excessive drinking, almost amounting to madness, any transaction he may enter into while in that state is invalid. If, however, the degree of intoxication falls short of such complete intoxication, he cannot have relief, unless it appear that he was drawn into drink by the contrivance of the other party, and that an unfair advantage was taken of his situation. The rule at law on the subject agrees with the rule in equity."

Kerr on Fraud and Mistake, p. 147 and notes.

The second instruction is in the exact language of Judge Story.

1 Story's Eq. Jur., § 231.

And this statement of the law is sustained by all the authorities, *without exception*, so far as a somewhat extended research has discovered them.

Osmond *vs.* Fitzroy, 3 P. Wms., 131, note A.
Adam's Equity, 433, & notes.
Pothier on Obligations, N. 49, *cited in* Wharton & Stellè's Md. Ju., § 36.
1 Maddock's Chancery, 300–303.
Jeremy's Eq. Jurisdiction, 392.

Ray's Medical Jurisprudence of Insanity, § 529.
Dean's Medical Jurisprudence, 587.
Willard's Eq. Jurisprudence, 196, 200, 201.
Story on Contracts, §§ 44–46.
State Bank *vs.* McCoy, 69 Penn. St., 204.
Campbell *vs.* Ketchum, 1 Bibb., 406:
3 Campbell, 33, note.
Cooke *vs.* Clayworth, 18 Vesey, Jr., 12.
Shaw *vs.* Thackeray, 23 Eng. L. & Eq., 18.
Watkins *vs.* Stockett, 6 Har. & Johnson, 443.

Even persons of very weak intellects are held liable for their contracts with parties whose good faith is unimpeached, unless they are *non compos mentis.* Lord Coke defines *non compos mentis* to be "a person who was of sound mind and memory, and by the visitation of God had lost it;" or, "he that by sickness, grief or other accident, *wholly loseth his understanding.*"

Beverly's Case, 4 Coke, 123; Coke's Lit., 247, *a.*

And Sir Joseph Jekyll, in Osmond *vs.* Fitzroy, 3 P. Wms., 129, 130, said "that if a weak man give a bond, and there be no fraud or breach of trust in the obtaining of it, equity will not set aside the bond only for the weakness of the obligor; neither will a court of equity *measure the size of people's understandings* or capacities." And Lord Thurlow said "that this court will not set aside the voluntary deed of a weak man, who is not *absolutely non compos mentis*, nor any deed of improvidence and profuseness, *for these reasons merely*, where no fraud appears."

Griffin *vs.* DeVeulle, 3 Wood's Lect., App. 16.

See also—
Jackson *vs.* King, 4 Cowen, 207.
Lispenard's Case, 26 Wend., 296.

If this doctrine be true as to those who are deprived of

reason by "the visitation of God," with how much greater justice may it be applied to the drunkard who loses his senses by his own vicious act.

2. Moreover the act of a drunkard even in a condition of the most absolute stupidity is not *void* but *voidable* only.

Story on Contracts, § 45.
Burroughs *vs.* Richman, 1 Green, (N. J.,) 243.
Reinicker *vs.* Smith, 2 Har. & John., 423.
Seymour *vs.* Delancy, 3 Cow., 445.
Joest *vs.* Williams, 42 Ind., 565.
State Bank *vs.* McCoy, 69 Penn. St., 204.

Now the evidence in this case is that about six weeks after the deed was executed the appellee signed a paper which was put in evidence consenting to the assignment of the lease for which the notes secured were given, (Rec., pp. 43 and 30;) that upon the maturity of these notes Harmon negotiated with Johnson for an extension of the time of payment, (McConnell's testimony, Rec., p. 30;) that he agreed to give another deed of trust, and employed real estate agents to raise money to pay off Johnson's notes, (Rec. 32.) And it was not till these efforts failed that the pretence of drunkenness was set up to relieve him of the performance of his obligations under the deed of trust, (Rec., pp. 30, 32.)

3. The judge who first tried the cause should not have sent an issue to the jury, for the evidence before him was sufficient to settle the case. It must be observed that there is nothing in the case to show any fraud on the part of the appellant or to indicate that he had anything to do with causing the appellee to drink or taking any advantage of him. The good faith of the appellant is established by the evidence, and the issue sent to the jury and the charge of Chief Justice Cartter exclude any hypothesis of fraud on his part. If the deed is set aside he loses $600, without

any fault on his part. McConnell, the attorney who drew the deed and notes, and McNamee, the notary who took the acknowledgment of the deed, and who was an assistant clerk of the Supreme Court of the District, witnesses entirely above suspicion and with no interest in the case, both testify that Harmon was sober when he executed the deed, or at least his condition of inebriety, if any, was not sufficiently decided to attract their attention. It is in proof that when McConnell asked for Harmon's deed, he said it was still at the Recorder's office, and he went there and got it and gave it to McConnell. McConnell says he explained the deed to him, and he said he understood it. Cross, one of Harmon's witnesses, testifies "Harmon told me he *was going security* for Kiernan & Whittemore," and again "Harman told me *he had gone security for Mr. Whittemore*, and (to) Horace Johnson for fishing shore and tackle, $600, I think. * * * I only know that Harmon told me that he went security. He told me so that evening," (Rec., pp. 16 and 17; so also Wallingsford, Rec., p. 20.) Kiernan when asked "if he, said Harmon, was so drunk that he did not know he was signing a deed of trust" answers "I did not say so; that is more than I could say." (Rec., p. 19.)

The whole history of this case shows that this alleged intoxication was an afterthought cunningly contrived to get Harmon out of the difficulty he had involved himself in by going security for Kiernan & Whittemore, and those worthies and their boon companions united to swear the story through. Compare the sixth section of the original bill, (R., p. 5) with Harmon's testimony, (R., pp. 27–8.)

The amount involved in this case is small, but the principle involved is of very great importance to the people of the District. If a man can go to a reputable attorney and employ him to make a deed, go for his own deed to enable him to obtain a description of his property, acknowledge the deed before a competent and honorable notary, and

then come into court, on the pretense that he was intoxicated when he executed it, and have his deed set aside, to the injury of a party dealing with him in perfect good faith, because he "did not understand its terms and conditions," then property here will be of most uncertain tenure, and law will be a mockery and equity a delusion.

A. G. RIDDLE,
FRANCIS MILLER,
*Solicitors for Appellant.*

# IN THE

# Supreme Court of the United States.

## No. 212.

HORACE S. JOHNSON, Appellant,

vs.

CHARLES W. HARMON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

*Appellee's Brief.*

The issue directed to be tried by the jury, was not merely whether Harmon was drunk or not drunk at the time of the execution of the deed of trust and notes mentioned in the proceedings, *i. e.*, on the 3d of February, 1871.

The issue was whether or not he was capable of executing a valid deed or contract at the said time; and this question was properly left to the jury, under the direction of the court.

Dr. Riley, Dr. Allen, John W. Childs, and a large number of witnesses (many of whose names are not mentioned in the record or any brief) gave evidence, showing that at the time of the execution of said deed of trust, Harmon was under the influence of liquor, and drunk and "*afflicted with alcholism*," and that he had been drinking liquor to excess on that day and for some days, if not weeks, prior thereto; and that he was "*demented*" and not fit to do business, and not competent to contract at that time, and that on days shortly prior thereto, he stood on the streets and "talked and acted like a fool;" and witnesses who knew him well,

testified that they refused to do business with him at or about that time, by reason of his drunkenness, and supposed incapacity to do business, or to contract, &c., and the jury found the fact that he was not competent to contract at that time," &c.—Aitkin's Science and Practice of medicine, ~~771, 775.~~ V. 2 - 843.

The deed of trust is a contract consisting of "terms and conditions;" and if, from "*alcholism*" or any other cause, Harmon had not sufficient mind to understand these terms and conditions, then he was not capable of executing a valid deed or contract.

He might have had sense enough to drive a jack-plane or a cart, or even to make a will, and yet not be capable of understanding the terms and conditions of this deed of trust.

Pow. on contrs., 20.

Reinckoff *v.* Reggs, 37 Inda., 207.

Story on Conts., sec. 44.

1 Story's Eq. Jur., sec. 233.

69 Pa. St. R. 208.

4 Cow. R. 207, 208, 219, 221.

1 Pars. on contrs., ~~337.~~ 387

1 Red. on Wills, 128, 129, 130, 131, and authorities there c

3 Camp. Nisi Prins., 33 & note.

1 Wharton & Stiles Med. Jur., sec. ~~68.~~ 2

Jer. Eq., Jur. ~~302-3.~~ 392 - 3

The law arising upon the evidence in the case was given to the jury with such fullness as to guide them correctly in their finding, and no jury of ordinary intelligence could have been misled; and there was therefore no error.

Railway Company & Whitton's ~~ex.~~, 13 Wal., 270.

M. THOMPSON,

*Solr. for Harmon.*

13 Wells. & W. 623.

2 Kents. Com. 457.